R15. Administrative Services, Administrative Rules.
R15-5. Administrative Rules Adjudicative Proceedings.
R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63-46b-4 and 63-46a-5, and is enacted under the authority of Subsection 63-46a-10(1)(n) and Sections 63-46b-4, 63-46b-5, and 63-46b-21.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63-46b-2.

(2) In addition, "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63-46a-10(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

(1) The division shall not publish a proposed rule or rule change when the division determines the agency has not met the requirements of Title 63, Chapter 46a, or of Rules R15-3 or R15-4.

(2) The division shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63-46a-4(6)(a) as interpreted in Section R15-4-5.

(3) The division shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

(1) An agency may request a review of a division refusal to publish or register a rule or rule change by filing a written petition for review with the division director.

(2) The division director shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the division director by filing a written appeal to the Executive Director of the Department of Administrative Services within 20 days of receipt of the division director's decision. The Executive Director shall respond within 20 days affirming or reversing the division director's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63, Chapter 46a, by filing a written petition with the division.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the division within the two-year limit set by Section 63-46a-14.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the division should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The division shall respond to the petition in writing within 20 days of its receipt.

(a) The division shall research all records pertaining to the rule or rule change at issue.

(b) The response of the division shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The division shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the division's findings by filing a written request for reconsideration with the division director.

(a) The director may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

(1) A rule the division determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.

(2) The division shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the division determines is procedurally valid shall be published and registered promptly.

KEY: administrative procedure, administrative law

June 1, 1996	**63-46a-10**
Notice of Continuation August 21, 1998	**63-46b-4**
	63-46b-5
	63-46b-21

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rules.
R156-31b-101. Title.

These rules are known as the "Nurse Practice Act Rules".

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in these rules:

(1) "APRN" means an advanced practice registered nurse.

(2) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education; and

(b) nursing education courses taken from an approved education program as defined in Section R156-31b-601.

(3) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "State-Approved Schools of Nursing RN", 1997, and "State-Approved Schools of Nursing LPN/LVN", 1997, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.

(4) "CCNE" means the Commission on Collegiate Nursing Education.

(5) "Contact hour" means 50 minutes.

(6) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(7) "CRNA" means a certified registered nurse anesthetist.

(8) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(9) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to administering or prescribing a prescription drug.

(10) "Generally recognized scope and standards of advanced practice registered nursing" means the scope and standards of practice set forth in the "Scope and Standards of Advanced Practice Registered Nursing", 1996, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(11) "Generally recognized scope of practice of licensed practical nurses" means the scope of practice set forth in the "Model Nursing Administrative Rules", 1994, published by the National Council of State Boards of Nursing, which is hereby adopted and incorporated by reference, or as established by the professional community.

(12) "Generally recognized scope of practice of registered nurses" means the scope of practice set forth in the "Standards of Clinical Nursing Practice", 2nd edition, 1998, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(13) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Section R156-31b-601.

(14) "LPN" means a licensed practical nurse.

(15) "NLNAC" means the National League for Nursing Accrediting Commission.

(16) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(17) "Non-approved education program" means any foreign nurse education program.

(18) "Other specified health care professionals", as used in Subsection 58-31b-102(12), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;
(b) certified nurse midwife;
(c) chiropractic physician;
(d) dentist;
(e) osteopathic physician;
(f) physician assistant;
(g) podiatric physician; and
(h) optometrist.

(19) "RN" means a registered nurse.

(20) "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

(21) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 31b.

R156-31b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-31b-201. Advisory Peer Committees Created - Membership - Duties.

There is created in accordance with Subsection 58-1-203(6) and Section 58-31b-202(2), the Advanced Practice Advisory Peer Committee whose duties and responsibilities include reviewing APRN applications and advising regarding practice issues.

R156-31b-202. Prescriptive Practice Peer Committee Audits.

In accordance with Subsection 58-31b-202(1)(b)(ii), the Prescriptive Practice Peer Committee shall audit and review the prescribing records of APRNs by reviewing the controlled substance data bank. The prescribing records of five percent of APRNs with a controlled substance license will be reviewed on a quarterly basis.

R156-31b-301. License Classifications - Professional Upgrade.

Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

R156-31b-302a. Qualifications for Licensure - Education Requirements.

In accordance with Sections 58-31b-302 and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure by equivalency shall submit written verification from an approved registered nurse education program, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or registered nurse education program.

(a) Commission on Graduates of Foreign Nursing Schools;

(b) Foundation for International Services, Inc; or

(c) International Consultants of Delaware, Inc.

R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing as Psychiatric Mental Health Nurse Specialists.

In accordance with Subsection 58-31b-302(3)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall:

(1) be a minimum of 4,000 hours, including 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental health therapy services provided;

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing. The remaining 3,000 hours shall:

(i) be completed while an employee, unless otherwise approved by the board and division, under the supervision of an approved supervisor; and

(ii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3). At least 2,000 hours must be under the supervision of an APRN specializing as a psychiatric mental health nurse specialist.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the division in collaboration with the board; and

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing as a psychiatric mental health nurse specialist under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(3)(g) by demonstrating that the applicant has successfully engaged in active practice as a psychiatric mental health nurse specialist for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following completion of their educational program shall be required to submit a plan of action for approval by the division in collaboration with the board before being allowed to sit for additional examinations.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with his educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) School Nurse Practitioner;

(D) Pediatric Nurse Practitioner;

(E) Gerontological Nurse Practitioner;

(F) Acute Care Nurse Practitioner;

(G) Clinical Specialist in Medical-Surgical Nursing;

(H) Clinical Specialist in Gerontological Nursing;

(I) Clinical Specialist in Community Health Nursing;

(J) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(K) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;

(ii) National Certification Board of Pediatric Nurse Practitioners and Nurses;

(iii) American Academy of Nurse Practitioners;

(iv) The National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) The Oncology Nursing Certification Corporation.

(c) An applicant for licensure as a CRNA shall pass the examination of the Council on Certification of the American Association of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, the examination requirements for graduates of nonapproved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following initial application for licensure shall be required to submit, for approval by the division in collaboration with the board, a plan of action detailing steps to be taken by the applicant to prepare to retake the examination, before being allowed to sit for additional examinations.

(b) If an applicant for licensure as an RN cannot document satisfactory practice for 4,000 hours in an approved jurisdiction, the applicant shall also pass the CGFNS examination.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; and

(ii) actively participate in a quality review program defined in Section R156-31b-304.

(c) A CRNA shall complete the following:

(i) be currently certified or recertified as a CRNA; and

(ii) produce evidence of continuing participation in an anesthesia quality assurance program which meets the criteria set forth in the document "Implementing a Quality Assurance Program in Anesthesia Departments, an Action Plan of the Council on Nurse Anesthesia Practice", which is hereby adopted and incorporated by reference.

R156-31b-304. Quality Review Program.

In accordance with Subsection 58-31b-305(3)(b), quality review programs must meet the following criteria for division approval.

(1) The program shall consist of a program provider (provider), program staff, and APRNs, and shall be under the direction of the quality review provider.

(2) The provider shall clearly demonstrate that its personnel have the knowledge and expertise in the practice of advanced practice registered nursing and quality review to permit the provider to competently conduct a quality review program.

(3) The review process shall be conducted on a regular, systematic basis.

(4) A quality review program shall provide in its agreement between the provider and the licensee that:

(a) Upon a finding of gross incompetence, gross negligence, or a pattern of incompetence or negligence, the provider shall submit its findings to the division for appropriate action.

(b) If the licensee fails to substantially comply with a corrective action plan determined appropriate by the provider after a negative review by the provider, said failure shall be reported to the division for appropriate action.

(c) The provider shall make available to the division the results of a quality review upon the proper issuance of a subpoena by the division.

R156-31b-306. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(3) To reactivate a license which has been inactive for more than five years, the licensee must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license.

R156-31b-307. Reinstatement of Licensure.

In addition to Section 58-1-308 and Subsections R156-1-308(e), (f), (g), (h) and (i), an applicant for reinstatement of licensure shall meet the following:

(1) To reinstate a license which has been expired for five years or less, the applicant must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) To reinstate a license which has been expired for more than five years, the applicant must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reinstate a license.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire:

(a) immediately upon failing to take the first available examination;

(b) 30 days after notification, if the applicant fails the first available examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as an LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended under Subsection 58-31b-401(2)(d) may petition the division at any time that he

can demonstrate that he can resume the competent practice of nursing.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Using a protected title:
initial offense: $100 - $300
subsequent offense(s): $250 - $500

(2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:
initial offense: $50 - $250
subsequent offense(s): $200 - $500

(3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:
initial offense: $1,000 - $3,000
subsequent offense(s): $5,000 - $10,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(5) Impersonating a licensee or practicing under a false name:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(6) Knowingly employing an unlicensed person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000

(7) Knowingly permitting the use of a license by another person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(9) violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(10) violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(18) Practicing or attempting to practice as a nurse beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(20) Failure to safeguard a patient's right to privacy:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(22) Engaging in sexual relations with a patient:
initial offense: $5,000 - $10,000
subsequent offense(s): $10,000

(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000

(24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(25) Unauthorized taking or personal use of a patient's personal property:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000

(26) Knowingly entering false or misleading information into a medical record or altering a medical record:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(27) Unlawful or inappropriate delegation of nursing care:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(28) Failure to exercise appropriate supervision:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(30) Failure to file or impeding the filing of required reports:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(31) Breach of confidentiality:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(32) Failure to pay a penalty:
Double the original penalty amount up to $10,000
(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(34) Failure to confine practice within the limits of competency:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(35) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

R156-31b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;

(2) an RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17a-620, or as may be otherwise provided by law;

(3) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(a) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;

(b) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;

(c) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs.

R156-31b-601. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter, which are hereby adopted and incorporated by reference, are respectively:

(1) the "Interpretive Guidelines for Standards and Criteria, Practical Nursing Programs", 1997 Revised, published by the NLNAC.

(2) the "Interpretive Guidelines for Standards and Criteria, Associate Degree Programs in Nursing, 1997 Revised, published by the NLNAC.

(3) the "Interpretive Guidelines for Standards and Criteria, Baccalaureate and Higher Degree Programs in Nursing, 1997 Revised, published by the NLNAC, or the "Standards of Accreditation of Baccalaureate and Graduate Nursing Education Programs", February 1998, published by the CCNE.

R156-31b-602. Nursing Education Program Full Approval.

(1) Full approval of a nursing program shall be granted when it becomes accredited by the NLNAC or the CCNE.

(2) Programs which have been granted full approval as of the effective date of these rules and are not accredited, must become accredited within five years or be placed on probationary status.

R156-31b-603. Nursing Education Program Provisional Approval.

(1) The division may grant provisional approval to a nursing education program for a period not to exceed three years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards for approval except accreditation; and

(d) is progressing in a reasonable manner to qualify for full approval by obtaining accreditation.

(2) Programs which have been granted provisional approval as of the effective date of these rules and are not accredited, must become accredited within five years.

R156-31b-604. Nursing Education Program Probationary Approval.

(1) The division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for full approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(2) The division may place on probationary approval status a program which implements an outreach program or satellite program without prior approval of the board.

(3) Programs which have been granted probationary approval as of the effective date of these rules and are not accredited, must become accredited within five years or be discontinued.

R156-31b-605. Nursing Education Program Notification of Change.

(1) A nursing education program wishing to begin a new program or to extend or expand existing programs shall submit an application to the division for approval at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall submit an application to expand to the division for approval at least one year prior to the expansion. Programs who fail to notify the division of expansion plans may be placed on probationary

approval status.

R156-31b-606. Nursing Education Program Surveys.

The division may conduct a survey of nursing education programs to monitor compliance with these rules.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(10)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17a-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

KEY: licensing, nurses

September 1, 1998 **58-31b-101**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
R156-38-101. Title.

These rules are known as the "Residence Lien Restriction and Lien Recovery Fund Act Rules."

R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Claimant" means a person who submits an application or claim for payment from the fund.

(2) "Necessary party" includes the division, on behalf of the fund, and the claimant.

(3) "Owner", as defined in Section 38-11-102(12), does not include any person or developer who builds residences which are offered for sale to the public.

(4) "Permissive party" includes a licensee or qualified beneficiary who will be required to reimburse the fund if a claimant's claim is paid from the fund.

R156-38-103a. Authority - Purpose - Organization.

(1) These rules are adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of these rules is patterned after the organization of Title 38, Chapter 11.

R156-38-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or these rules, be in accordance with Section 58-1-106.

R156-38-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38-105. Adjudicative Proceedings.

(1) The classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim against the fund within 30 days of notification by the division of the filing of the claim, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim.

(8) The findings of fact and conclusions of law established by a judgment entered by a civil court or a final order entered by an administrative agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

R156-38-108. Notification of Rights under Title 38, Chapter 11.

(1) A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and owner and in every notice of claim filed under Section 38-1-7 against the owner of an owner-occupied residence or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract with either a real estate developer or an original contractor;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

R156-38-202a. Initial Assessment Procedures.

(1) The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

(2) The amount of the initial assessment shall be established by the division and board in accordance with the procedures for a "new program" under Subsection 63-38-3.2(5).

R156-38-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Subsection 38-11-206(1).

R156-38-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the written contract:

(i) between the owner of the owner-occupied residence or the owner's agent and the original contractor for the performance of qualified services, to obtain the performance of qualified services by others, or for the supervision of the performance by others of qualified services in construction on the residence; or

(ii) between the owner of the owner-occupied residence or the owner's agent and the real estate developer for the purchase of an owner-occupied residence; or

(b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);

(2) if the claim involves an original contractor, documentation that the original contractor is licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(3) one of the following:

(a) an affidavit from the original contractor or real estate developer acknowledging that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract;

(b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract; or

(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with independent evidence establishing that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract;

(4) one or more of the following as required:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against an original contractor, subcontractor or real estate developer described in Subsection 38-11-204(3)(c) to recover monies owed for qualified services performed, filed within 180 days from the date the claimant last provided qualified services; and

(b) a copy of the Notice of Commencement of Action filed with the division; or

(c) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented claimant from satisfying Subsections (a) and (b);

(5) one of the following:

(a) a copy of a civil judgment entered in favor of claimant against the original contractor, subcontractor or real estate developer containing a finding that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract; or

(b) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented the claimant from obtaining such a civil judgment, together with independent evidence establishing that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract;

(6) one or more of the following as required:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of claimant;

(b) a copy of the return of service of the supplemental order indicating either that service was accomplished on the original contractor, subcontractor or real estate developer or that said contractor or developer could not be located or served;

(c) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; and

(d) a return of execution of any writ of execution; or

(e) documentation that a bankruptcy filing or other action by the original contractor or real estate developer prevented the claimant from satisfying Subparagraphs (a) through (d);

(7) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(8) one of the following:

(a) an affidavit from the owner establishing that the owner is an owner as defined in Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13);

(b) a copy of a civil judgment containing a finding that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13); or

(c) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent evidence establishing that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13).

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to

produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence, and a separate filing fee must be paid for each claim.

R156-38-204b. Format for Notice of Commencement of Action.

The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe, Plaintiff	: :	Notice of Commencement of Action
-vs-	:	Case No.
Richard Roe, Defendant	:	

Notice is hereby provided of the filing of Case No. (number) on (date) before (Court).

Brief explanation of nature of case:

Address of defendant:

Name and address of potential fund claimant:

Name and address of original contractor, subcontractor, and/or real estate developer described in Subsection 38-11-204(3)(c):

For each owner-occupied residence included in the civil action:

Name and address of the owner of the owner-occupied residence;

Street address of the owner-occupied residence;

Amount of damages sought against the owner-occupied residence;

Last date qualified services were provided for the owner-occupied residence by the potential fund claimant:

Signature of Claimant or claimant's representative

Date of signature

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Industrial Commission of the Utah Labor Division for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Industrial Commission of Utah Labor Division containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer.

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(5), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38-204d. Claims Against the Fund by Non-Laborers - Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) For informal claims determined by the division to be payable from the fund, the division shall order payment of pre-judgment and post-judgment costs, attorney fees and interest in an amount not exceeding the following:

(a) If a civil judgment makes specific dollar amount or interest rate, or both, awards for costs, attorney fees, or interest, or all of them, the division shall order payment as ordered in the civil judgment, to the extent that the costs, attorney fees, or interest, or all of them are attributable to the owner-occupied residence at issue in the claim.

(b) If a civil judgment awards claimant costs, attorney fees, or interest, or all of them other than in specific dollar or interest rate amounts, the division shall award:

(i) reasonable costs as supported by evidence;

(ii) attorney fees, documented according to the provisions of Rule 4-505, Utah Code of Judicial Administration, subject to the following limitations:

(A) if the payable amount of qualified services is $3,000 or less, not more than 33% of the value of the qualified services and not exceeding $750;

(B) if the payable amount of qualified services is greater than $3,000 and $10,000 or less, not more than 25% of the value of qualified services and not exceeding $2,000; or

(C) if the payable amount of qualified services is greater than $10,000, attorney fees in an amount of not more than 20% of the value of qualified services and not exceeding $7,000; and

(iii) interest from the date payment for qualified services became due or the civil judgment was entered to the date the claim was filed with the division at a rate of 5% per annum.

(2) For formal claims determined by the division to be payable from the fund, the division shall order payment from the fund in an amount not to exceed reasonable costs, attorney fees and interest required to bring the claim on the owner-occupied residence at issue, subject to the following limitations:

(a) Reasonable costs as supported by evidence.

(b) Attorney fees, documented according to the provisions of Rule 4-505, Utah Code of Judicial Administration, may not

exceed $3,000 or 33% of the value of the payable qualified services.

(c) Interest shall be paid from the date the division establishes that payment for qualified services on the residence at issue became due to the date the claim was filed with the division at a rate of 5% per annum.

R156-38-301. Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, shall be exempt from payment of that specific assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee on inactive status, who would otherwise be required to pay an assessment, can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) the most recent special assessment immediately preceding the date on which the license is reinstated to active status.

R156-38-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal notices shall specify a renewal application due date no later than the expiration date for the existing registration.

(5) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(6) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

KEY: licensing, contractors, liens
August 20, 1998 **38-11-101**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rules.
R156-60b-101. Title.

These rules are known as the "Marriage and Family Therapist Licensing Act Rules".

R156-60b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Candidacy status by the COAMFTE" means that an education program leading to an earned master's or doctor's degree in marriage and family therapy has been formally recognized by COAMFTE as a candidate for accreditation.

(3) "COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

(4) "Earned a masters or doctoral degree in a discipline which is a prerequisite for licensure under this chapter", as used in Subsection 58-60-116(1)(b), means completion of the education requirements set forth in Subsections 58-60-305(4) and R156-60b-302a(2).

(5) "Face to face supervision", as used in Subsection 58-60-305(6), means one to one supervision between the supervisor and the supervisee or group supervision between the supervisor and up to two supervisees. During group supervision, one and a half hours is equivalent to one clock hour of supervision.

(6) "Temporary certificate", as used in Section 58-60-116, means a temporary license issued by the division to practice as a marriage and family therapist-temporary under the supervision of an approved supervisor in accordance with Section 58-60-116 and Sections R156-60b-302b and R156-60b-302d.

(7) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60b-502.

R156-60b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 3.

R156-60b-104. Organization - Relationship to R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) An institution or program of higher education qualifying an applicant for licensure as a marriage and family therapist, to be recognized or approved by the division in collaboration with the board under Subsections 58-60-305(4)(a) and (c), shall be a marriage and family therapy education program accredited by or in candidacy status by the COAMFTE at the time the applicant received the required earned degree.

(2) An earned doctorate or master's degree in a field of education emphasizing human behavioral studies and skill in therapy or counseling qualifying an applicant for licensure as a marriage and family therapist under Subsections 58-60-305(4)(b) and (d), shall:

(a) be accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 1997-98 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education; and

(b) include successful completion of the following graduate level course work and a clinical practicum:

(a) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(b) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy;

(c) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) three semester hours/three quarter hours in professional ethics;

(e) three semester hours/three quarter hours in research methodology and data analysis;

(f) three semester hours/three quarter hours in electives in marriage and family therapy; and

(g) a clinical practicum of not less than 500 hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

(3) An earned doctorate or master's degree in a field of religious study with a documented emphasis in marriage and family therapy qualifying an applicant for licensure as a marriage and family therapist under Subsection 58-60-305(4)(e), shall meet the requirements set forth under Subsections (2)(a) through (g).

R156-60b-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-305(5) and (6), each individual entering into supervised marriage and family therapy training and mental health therapy training under an approved supervisor shall obtain a license as a marriage and family therapist-temporary under Section 58-60-116.

(2) A change in supervisor must be submitted to the Division on forms prescribed by the Division.

(3) Marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours qualifying an applicant for licensure as a marriage and family therapist under Subsections 58-60-305(5) and (6), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under a program of supervision by a marriage and family therapist meeting the requirements under Sections R156-60b-302(e) and R156-60b-302(f);

(d) in accordance with Subsection 58-60-305(6), include a minimum of 500 hours in conjoint, couple or family therapy; and

(e) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(4) An applicant for licensure as a marriage and family

therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements under Subsection (3) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(5) and (6), and Subsection R156-60b-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

R156-60b-302c. Qualifications for Licensure - Examination Requirements.

The examination requirement which must be met by an applicant for licensure as a marriage and family therapist under Subsection 58-60-305(7) is passing the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d. Qualifications for Designation as an Approved Marriage and Family Therapist Training Supervisor and Mental Health Therapist Training Supervisor.

To be approved by the division in collaboration with the board as a supervisor of marriage and family therapist and mental health therapy training required under Subsections 58-60-305(5) and (6) and Section 58-60-116, an individual shall:

(1) be currently approved by AAMFT as a marriage and family therapist supervisor; or

(2) be currently licensed or certified in good standing as a marriage and family therapist in the state in which the supervised training is being performed; and meet the following requirements:

(a) demonstrate practice as a licensed marriage and family therapist engaged in the practice of mental health therapy for not less that 4,000 hours in a period of not less than two years;

(b) successfully complete 30 clock hours of instruction approved by the division in collaboration with the board in the theory, practice, and process of supervision;

(c) successfully complete 36 clock hours of training related to the practice of supervision under the direction of an approved marriage and family therapist training supervisor; and

(d) if providing supervision within the state, submit an application on forms available from the division and be approved as a supervisor by the division in collaboration with the board prior to engaging in supervision of training required for licensure; or

(3) if supervision was provided outside the state, submit evidence of qualifications as a supervisor on forms available from the division providing evidence that during the period of supervision of an applicant for licensure, that the supervisor in all respect met the qualifications for a supervisor within the state under this section.

(4) A marriage and family therapist approved as a supervisor under Subsection (2) must reapply for approval every five years.

R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established as follows:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established; and

(10) supervise not more than three supervisees at any given time unless approved by the board and division.

R156-60b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-60b-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing September 30th of each even numbered year, a marriage and family therapist shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's

professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 14 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist;

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years; however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60b-306. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302e and R156-60b-302f;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b(3) and R156-60b-302f(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(11) physical contact with a client when there is a risk of

exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation;

(19) failure to abide by the provisions of the Model Code of Ethics for Marriage and Family Therapists as adopted by the American Association of Marriage and Family Therapy Regulatory Boards (AAMFTRB) effective October 7, 1993, which is adopted and incorporated by reference; and

(20) failure to abide by the provisions of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective August 1, 1991, which is adopted and incorporated by reference.

KEY: licensing, therapists, marriage and family therapist*
August 20, 1998 **58-1-106(1)**
58-1-202(1)
58-60-301

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Professional Counselor Licensing Act Rules.
R156-60c-101. Title.

These rules are known as the "Professional Counselor Licensing Act Rules".

R156-60c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "Internship" means:

(a) 600 clock hours of supervised counseling experience of which 200 hours must be in the provision of mental health therapy; or

(b) five years of supervised experience engaged in the practice of mental health therapy.

(2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or five quarter hours duration for academic credit.

(3) "Temporary certificate", as used in Section 58-60-116, means a temporary license issued by the division to practice as a professional counselor-temporary under the supervision of an approved supervisor in accordance with Section 58-60-116 and Sections R156-60c-302b and R156-60c-401.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

R156-60c-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 4.

R156-60c-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60c-302a. Qualifications for Licensure - Education Requirements.

(1) The recognized accredited institution of higher education in Subsection 58-60-405(4) is one which is accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 1997-98 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education.

(2) The core curriculum in Subsection 58-60-405(4)(a) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making;

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory;

(d) a minimum of two semester or three quarter hours shall be in group theory;

(e) a minimum of six semester or nine quarter hours shall be in human growth and development. Examples are:

(i) physical, social and psychosocial development;

(ii) personality development;

(iii) learning theory and cognitive development;

(iv) emotional development;

(v) life-span development;

(vi) enhancing wellness;

(vii) human sexuality; and

(viii) career development;

(f) a minimum of three semester or five quarter hours shall be in cultural foundations. Examples are:

(i) human diversity;

(ii) multicultural issues and trends;

(iii) gender issues;

(iv) exceptionality;

(v) disabilities;

(vi) aging; and

(vii) discrimination;

(g) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

(i) building, maintaining and terminating relationships;

(ii) solution-focused and brief therapy;

(iii) crisis intervention;

(iv) prevention of mental illness;

(v) treatment of specific syndromes;

(vi) case conceptualization;

(vii) referral, supportive and follow-up services; and

(viii) lab not to exceed four semester or six quarter hours;

(h) a minimum of two semester or three quarter hours shall be in psychopathology and DSM classification;

(i) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

(i) addictions;

(ii) substance abuse;

(iii) cognitive dysfunction;

(iv) sexual dysfunction; and

(v) abuse and violence;

(j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;

(k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

(l) a minimum of three semester or five quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

(i) statistics;

(ii) research methods, qualitative and quantitative;

(iii) use and interpretation of research data;

(iv) evaluation of client change; and

(v) program evaluation;

(m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

(n) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(o) a minimum of 16 semester or 23 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection. These hours are required beginning January 1, 1997.

(3) The supplemental course work shall consist of formal

graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) Professional counseling course work required in the core curriculum may be completed post degree.

R156-60c-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-405(5) and (6), each individual entering into supervised professional counselor training under an approved supervisor shall obtain a license as a professional counselor-temporary under Section 58-60-116.

(2) A change in supervisor must be submitted to the Division on forms prescribed by the Division.

(3) Professional counselor and mental health therapy training consisting of a minimum of 4,000 hours qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(5) and (6), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy under the supervision of an approved professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(4) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (3) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(5) and (6), and Subsections R156-60c-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

R156-60c-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a professional counselor under Subsection 58-60-405(7) are established as follows:

(a) the Utah Professional Counselor Law, Rules and Ethics Examination with a score of at least 75;

(b) the National Counseling Examination of the National Board for Certified Counselors with the minimum criterion score as set by the National Board for Certified Counselors; and

(c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors with the minimum criterion score as set by the National Board for Certified Counselors. This examination is required beginning January 1, 1997.

R156-60c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-60c-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this Section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist professional counselor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to

qualified professional education to demonstrate it meets the requirements under this Section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60c-306. License Reinstatement - Requirements.

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental health therapy training as a professional counselor-temporary;

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

R156-60c-401. Qualifications for Designation as an Approved Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.

To be approved by the division in collaboration with the board as a supervisor of professional counselor and mental health therapy training required under Subsections 58-60-405(5) and (6), an individual shall:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(5) in the state in which the supervised training is being performed;

(2) demonstrate practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years, or equivalent experience as approved by the division and board;

(3) if providing supervision within the state, submit an application on forms available from the division and be approved as a supervisor by the division in collaboration with the board prior to engaging in supervision of training required for licensure; and

(4) if supervision was provided outside the state, submit evidence of qualifications as a supervisor on forms available from the division providing evidence that during the period of supervision of an applicant for licensure, that the supervisor in all respects met the qualifications for a supervisor within the state under this section.

R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy; and

(9) supervise not more than three supervisees at any given time unless approved by the board and division.

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices

which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by the provision of the American Counseling Association's Ethical Standards, March 1988, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, professional counselors*

August 20, 1998

58-60-401
58-1-106(1)
58-1-202(1)

R277. Education, Administration.
R277-438. Dual Enrollment.
R277-438-1. Definitions.

A. "USOE" means the Utah State Office of Education.

B. "Private school" means a school satisfying the following criteria:

(1) maintained by private individuals or corporations;

(2) maintained and operated not at public expense;

(3) generally supported, in part at least, by tuition fees or charges;

(4) operated as a substitute for, and giving the equivalent of, instruction required in public schools;

(5) employing teachers able to provide the same quality of education as public school teachers;

(6) established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and

(7) licensed as a business by the Utah Department of Business Regulations.

C. "Home school" means a school comprised of one or more students officially excused from compulsory public school attendance under Section 53A-11-102.

D. "Full-time student" means a student earning the school district designated number(s) and type(s) of credits required for participation in extracurricular or interscholastic activities in the school district in which his parent or legal guardian resides.

E. "Utah High School Activities Association (UHSAA)" means the organization designated by the state to administer and supervise interscholastic activities among its member schools according to its constitution and by-laws.

F. "Board" means the Utah State Board of Education.

G. "Accredited" means evaluated and approved under the standards of the Northwest Accrediting Association or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

H. "Previous academic grading period" means the most recent period as defined by the school district for which a student received a recorded grade.

I. "Dual enrollment student" means a student who is enrolled simultaneously in public school and in a home school or an accredited private school.

J. "Eligibility" means a student's fitness and availability to participate in school activities governed by this rule. Eligibility is determined by a number of factors including residency (of student and legal guardian), scholarship, age, and number of semesters of participation in a particular activity.

K. "Transfer Committee" means a committee consisting of four principals, one UHSAA staff member, and two UHSAA Board of Trustees members.

R277-438-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the board, by 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by Section 53A-11-102.5 directing the Board to make rules for transferability of credits toward graduation that are earned in a private or home school and to make rules necessary to permit home school students and private school students to participate in public school extracurricular activities.

B. The purpose of this rule is to provide consistent statewide procedures and criteria for home school and private school students' participation in public school activities.

R277-438-3. Credit.

A. Utah school districts shall accept credits toward graduation from an accredited regularly established private school.

B. Utah school districts shall provide two or more options to earn credit toward graduation. At least one option shall be provided from among those listed in R277-700-6B(1), and at least one option shall be provided from those listed in R277-700-6B(2).

R277-438-4. Private and Home School Student Participation in Public School Extracurricular Activities.

A. Students exempted from compulsory public school education by the local board for instruction in private or home schools may be eligible for participation in extracurricular public school activities provided they are taking courses comparable to traditional school courses or earning credit under options outlined in R277-700-6 in at least as many of the designated courses as required by the local board of students for participation in that activity.

B. The private or home school student may only participate in extracurricular activities at the school within whose boundaries the student's parents or legal guardian resides.

C. Any public or accredited private school student who has not maintained scholastic eligibility shall be ineligible to participate in extracurricular activities as a dual enrollment student consistent with eligibility standards for all students as defined in the Utah High School Activities Association by-laws. The Utah High School Activities Association by-laws are available from the Utah State Office of Education Deputy Superintendent, the Utah High School Activities Association and most school district offices.

D. Eligibility of transfer students, with the exception of R277-438-4C students, shall be decided consistent with Utah High School Activities Association Handbook, Transfer Students, 1993-94 pages 28 and 29 which provides:

(1) If a student's parents move, the student may remain at the high school where he or she has established eligibility. However, once this decision is made the student may not at a later date transfer to the school where his/her parents reside without loss of eligibility.

(2) The Transfer Committee shall rule on requests for waiver of such requirements on a case-by-case basis. The Transfer Rule does not apply to speech and music. All transfers from public schools or private schools shall be viewed in the same manner, that is, no distinction shall be made in any case with regard to public or private nature of any school involved in such transfers. Further, in reviewing all requests for waiver by the Transfer Committee the following criteria will apply singly to each request:

(a) In transfers which involve a perceived greater educational opportunity in a new school situation, the request shall be denied unless it can be demonstrated that the student is

continuing an educational program or sequence of courses which was or became unavailable at the former school. In such demonstration, the student shall have attained significant progress and demonstrated proficiency or accomplishment in pre-requisite courses.

(b) In transfers made under an open enrollment district policy which are of a voluntary nature, the request shall be denied (exceptions (d) and (e) below).

(c) In transfers from private to public schools made as a result of stated financial hardship, requests shall be denied unless the student had applied for and been denied sufficient financial assistance by the private school which would have resolved the stated financial hardship.

(d) In transfers made upon a district voluntary desegregation policy, requests shall be approved if certified appropriately by district office personnel.

(e) In transfers made as a result of a school discontinuing opportunity for a student to compete in an activity in which that student had previously competed at the former school, the request shall be approved.

(f) In transfers made as a result of a change of legal guardianship as determined by a court having jurisdiction to do so, the request shall be approved provided the student attend the school in which attendance area the new legal guardian resides, and provided the Transfer Committee shall have determined the guardianship change was not for the purpose of establishing eligibility in the new school.

(g) In transfers which are specifically mandated by Court Order of any court having jurisdiction to so order, the request shall be approved.

(h) In transfers which are based upon a student's obligation to provide medical, financial, or household support for a family member, the request shall be approved provided that the student's obligation can be sustained.

(i) In transfers which are based upon medical considerations related to the student, the request shall be approved provided that a medical practitioner substantiate the need for such transfer as an integral part of medical therapy or prevention of aggravation of an existing condition.

(j) In transfers made from a private school as a result of a bona fide change of residence of the student's parents, the request shall be approved provided:

(i) the student enters the public school in which attendance area the new residence is located; or

(ii) the student enters a comparable (see below) private school which is located closest to the new residence; or

(iii) the student enters a comparable private school to which he/she may commute via public transportation in an obviously more satisfactory manner than to the closest comparable private school. Comparable shall be defined as school having similar religious affiliation or non affiliation, curriculum and scope of opportunity to participate in activity competition.

(k) In transfers which have been mandated by a school or school district for DISCIPLINARY REASONS, whether intradistrict, interdistrict, or between private and/or public schools, including legal expulsion or private school dismissal, the request shall be denied. Such mandatory transfer shall not be considered to be a matter of hardship.

E. The Utah High Schools Activities Association Handbook, pages 29 through 30, provides illustrative case examples.

F. Eligibility shall be established in the previous academic grading period, as defined by the school within whose boundaries the student lives.

R277-438-5. Fees.

A. Private and home school students are responsible for school fees in the same manner as full-time public school students.

B. School fees for private or home school students shall be waived by the school or school district if required under Section 53A-12-103 and R277-407, School Fees.

KEY: public education, dual enrollment*

1994 **Art X Sec 3**
53A-1-402(1)(b)
53A-11-102.5

R277. Education, Administration.
R277-458. 70% Utilization of School Buildings.
R277-458-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Instructional station" means a classroom, laboratory, shop, study hall, or physical education facility designed for student instruction. For example, if a gymnasium were designed to accommodate two P.E. classes, the gymnasium would represent two instructional stations.

C. "Intolerable classroom" means a space too small for intended use, a space with undesirable environmental conditions that cannot be corrected, approved rent space, makeshift space, a library or stage used as a classroom, and any space declared unsuitable by the State Fire Marshal.

D. "Five-year plan" means the comprehensive capital outlay plan required under R277-452.

R277-458-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-17a-142 which requires that school buildings operate at no less than 70% of maximum capacity and provides exceptions, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for the efficient use of public school buildings.

R277-458-3. School Building Utilization.

A. As part of its five-year plan, a local school district shall certify to the Board based upon October 1 of the current year or the previous year peak student enrollments:

(1) that the district is in compliance with Section 53A-17a-142 and Board standards regulating school building utilization. A district may demonstrate compliance with Section 53A-17a-142 by using eighty percent capacity if computed with the student instruction stations option (see Sections 3(C)(2) and (3)); and

(2) the calculated capacity of each school in the district.

B. A school need not meet either student capacity standard of Section 3(A)(1) if it qualifies under any of the following:

(1) the nearest elementary school for transfer purposes is more than a three-mile radius in distance from other elementary schools;

(2) the nearest middle or junior high school for transfer purposes is more than a five-mile radius in distance from other middle or junior high schools;

(3) the nearest high school for transfer purposes is more than a ten-mile radius in distance from other high schools;

(4) the school operating at less than the student capacity standard could not be closed and the students moved to eligible transfer schools without the transfer schools exceeding 100% of capacity as determined by R277-458-3C(1);

(5) there is only one elementary school, one junior high or middle school, and one high school in the district.

C. Student capacity is determined as follows:

(1) computing building capacity according to one of the following three options:

(a) 70% Standard: computing the capacity based on Utah State Office of Education square feet per student criteria;

(b) Student Instructional Space Standard: computing capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3);

(c) 70% Average Capacity Standard: computing the average of capacity based on Utah State Office of Education square feet per student criteria, and capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3).

(2) identifying by room number or description each instructional station within a school. Intolerable classrooms and auxiliary spaces are not counted in calculating student capacity. Instructional spaces of less than 500 square feet in area, except for spaces for special education, are not counted in calculating student capacity. Rented instructional space may be excluded in computing building capacity providing rental fees cover district overhead costs for maintenance and operation. If option (b) is used and intolerable classrooms and spaces are excluded from the capacity calculation, schools must operate at 80% of capacity;

(3) determining the number of student instructional stations or the student capacity of each room or instruction station identified:

(a) in computing capacity of regular classrooms, the following standards apply:

(i) kindergarten: 20 students per classroom, per day--two one-half day sessions;

(ii) grades one through three: 15 students per classroom;

(iii) grades four through six: 20 students per classroom;

(iv) junior high and middle school: 20 students per classroom;

(v) junior high/senior high combinations: 20 and one-half students per classroom;

(vi) senior high: 20 students per classroom.

(b) student capacity for laboratories, physical education facilities, shops, study halls, self-contained special education classrooms, facilities jointly financed by school districts and another community agency for joint use, and similar rooms must be calculated individually. Capacity for self-contained special education classrooms shall be based upon students per class as defined by Board special education standards. Sufficient documentation must be filed to be available for audits.

(c) capacities of relocatable classrooms are included if in use;

(d) auditoriums; multi-purpose rooms; not more than one elementary school computer laboratory per elementary school; library media centers; rooms for federal Headstart programs; other rooms used for required state or federal programs; auxiliary spaces, such as stages; laboratories which are part of vocational or science programs; and pull-out rooms within team-teaching spaces are not included in calculating student instruction stations.

(e) a district which adopts a voted leeway specifically to reduce classroom size may use student capacity goals stipulated in its leeway election literature or its board minutes to establish a lesser instruction station capacity. Instruction station capacity may be reduced by the same percentage as the district decrease in teacher-pupil ratios as a result of the leeway.

(4) adjusting, at the option of the district, with Utah State

Office of Education approval, for building capacity which is based on square foot data for the following:

(a) self-contained classrooms for handicapped students. The square footage for the classroom may be reduced proportionally according to the ratio of the regular student capacity of the room less the recommended students per class as defined by the Board special education standards, divided by the regular student capacity of the room;

(b) approved rental instructional areas;

(c) facilities jointly financed and used by a school district and another community agency. Reductions are made proportionally to the community share for capital costs;

(d) a voted leeway adopted specifically to reduce class size. The square footage for a building may be reduced by the same percentage as the decrease in teacher-pupil ratios resulting from the voted leeway.

D. If undue hardship or inequities are created through exact application of the standards adopted under this section, a school district may request the Board to make exceptions in individual cases.

E. Schools which do not meet the seventy per cent utilization or the student instructional space standard may be granted exception if:

(1) the school district demonstrates to the satisfaction of the Board that the school is in a projected high student growth area, including inter and intra district student transfers, in which the school is projected to reach seventy per cent utilization within three years' time;

(2) the school is being closed by action of the local board with closure to be accomplished by the end of the following school year; or

(3) the school district demonstrates to the satisfaction of the Board that costs incurred in complying with the standards exceed the costs of continued operation of a facility.

F. District school building plans approved by the Board may not exceed the Utah State Office of Education per student space criteria unless the district has only one elementary school, one junior high or middle school, and one high school.

R277-458-4. Guidelines for Day Care Centers in Public Schools.

A. A school district board may authorize the use of part of a school building for a child care center only if the school is in compliance with Section 53A-17a-142.

B. Establishment of a child care center in a public school building is contingent upon the local school board determining that the center will not interfere with the building's use for regular school purposes.

C. The decision in Subsection (4)(B) shall be made at the sole discretion of the local school board.

KEY: education finance, educational facilities

August 15, 1998	**Art X Sec 3**
Notice of Continuation April 15, 1997	**53A-1-401(3)**
	53A-17a-142

R277. Education, Administration.
R277-460. Distribution of Substance Abuse Prevention Account.
R277-460-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Educational materials" means visual and auditory media, curricula, textbooks, and other disposable or non-disposable items that enhance student understanding of the subject matter.

C. "Evaluation" means a review by a person or group which assesses procedures, results and products specific to a program.

D. "Local Substance Abuse Authority" means the person or group designated by the Legislature as the county authority to receive public funds for substance abuse prevention and treatment.

E. "Prevention education" means proactive educational activities designed to eliminate any illegal use of controlled substances.

F. "Prevention guidelines" means criteria established by the Utah Association of Substance Abuse Program Providers to be used in selecting or developing or both substance abuse prevention materials.

G. "Superintendent" means the State Superintendent of Public Instruction.

H. "USOE" means the Utah State Office of Education.

R277-460-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah State Constitution which vests general control and authority over public education in the Board, by Section 53A-13-102, U.C.A. 1953, which directs the Board to adopt rules providing for instruction on the harmful effects of controlled substances and by Section 63-63a-5, U.C.A. 1953, which provides for funds from the Substance Abuse Prevention Account to be allocated to the USOE:

(1) to provide for substance abuse prevention training for teachers and administrators; and

(2) to distribute to district and school programs for substance abuse prevention programs and instruction.

B. The purpose of this rule is to provide for the distribution of the USOE's share of the Substance Abuse Prevention Account.

R277-460-3. Fund Allocations.

A. The USOE shall retain sufficient funds to pay for the salary, benefits and indirect costs of a .5 FTE Program Administrator at a salary level to be determined by the Board.

B. The remaining funds shall be allocated as follows:

(1) An amount not to exceed fifteen percent shall remain at the USOE under the direction of the Students at Risk Section to purchase educational materials to supplement existing USOE substance abuse prevention curricula.

(2) An amount not to exceed fifteen percent shall remain at the USOE to encourage and support statewide substance abuse prevention training for school district teachers and administrators.

(3) An amount not to exceed fifteen percent shall remain at the USOE to promote Utah's Substance Abuse Prevention Program and encourage its classroom use by Utah educators.

(4) A minimum of fifty-five percent shall be distributed to school districts for use by the district, individual schools or in a cooperative drug abuse prevention effort based on application.

R277-460-4. Applications.

A. Applications shall be provided by the USOE.

B. Districts or schools shall submit applications to the person designated by the USOE Coordinator for Students at Risk.

C. The Students at Risk Coordinator shall make funding recommendations to the USOE Finance Committee as soon as reasonably possible after the application deadline.

D. Awards per district or school shall be based on funds available and specific funding amounts shall be provided in the USOE application.

E. Only applications for funding that propose projects or programs consistent with Utah Prevention Guidelines shall be considered for funding.

F. Applicants shall demonstrate cooperation and collaboration with local substance abuse prevention authorities.

G. Projects receiving funding shall be notified of funding approval by the USOE Finance Committee.

R277-460-5. Limitations on Funds.

A. Funds shall be used by the USOE, school districts and schools exclusively for purposes set forth in Section 63-63a-5, U.C.A. 1953.

B. Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the Coordinator for Students at Risk or his designee.

C. Funds received by school districts or schools shall not be used to supplant either currently available district funds or funds available from other state or local sources.

R277-460-6. Evaluation and Reports.

A. An applicant that accepts a USOE Substance Abuse Prevention award shall provide the USOE with a year-end evaluation report before June 30 of the fiscal year in which the award was made.

B. The year-end report shall include:

(1) an expenditure report;

(2) a narrative description of activities funded; and

(3) copies of all products and materials developed with USOE Substance Abuse Prevention funds.

C. The USOE may require additional evaluation or audit procedures from an award recipient to demonstrate the use of funds consistent with the law and Board rules.

R277-460-7. Waivers.

The Superintendent may grant a written request for a waiver of a requirements or deadline which a district finds unduly restrictive.

KEY: public schools, substance abuse prevention*
1993 **Art X Sec 3**
Notice of Continuation September 1, 1998 **53A-13-102**
63-63a-5

R277. Education, Administration.
R277-502. Teacher Certification Procedures.
R277-502-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Certificate" means a license issued by the Board which attests to the fact that the holder has satisfied the requirements for employment in the public school system.

C. "Endorsement" means a qualification in a specialty course or area which is given by the Board.

D. "Renewal" means a reissuance of a certificate.

E. "Appropriate employment" means full-time experience, in the field for which the certificate is issued, in a public or accredited private or parochial school.

F. "Special assignment teacher" means a teacher assigned to:

(1) alternative school settings with self-contained classrooms in which the teacher must teach several subjects;

(2) teach homebound students with the expectation that several subjects may be covered by the same teacher; or

(3) necessarily existent small or rural schools with limited faculty and enrollment in which teachers may teach more than three core subjects.

G. "Revalidation" means reaffirmation of certificate validity on the basis of experience verification as provided by law.

R277-502-2. Authority and Purpose.

A. This rule is authorized under Section 53A-6-101 which gives the Board power to issue educator certificates, and Section 53A-17a-107(2) which requires the Board to establish a percentage of district's professional staff to be certified in the area in which they teach for the district to receive full state funding, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of certificates and procedures for obtaining certificates required for employment as an educator in the public schools.

R277-502-3. Overview.

A. The Board uses the approved program approach to teacher education and certification. This involves:

(1) the development of teacher education programs by an institution in accordance with established rules and procedures;

(2) the official review and evaluation of each institutional program in accordance with standards adopted by the Board and the subsequent approval of a program if standards are met;

(3) certification by the Board of an applicant for certification upon completion of an approved program;

(4) the issuance, by the Board, of a basic certificate to beginning teachers. That certificate may be converted to a standard certificate upon demonstration of competence during employment.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of certification.

R277-502-4. The Certification Process; Basic and Standard Certificates.

A. An initial certificate, the Basic Certificate, is issued to an individual who is recommended by a Board-approved teacher education program. The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and met certification standards in the certification category for which the individual is recommended.

B(1) The Basic Certificate is issued for four years. It may be extended for one additional year, upon the employing school district's recommendation, if the Basic Certificate holder requires additional professional growth and assistance before a judgment about recommending a Standard Certificate can be made.

(2) Employing school districts and teacher preparation institutions shall cooperate in making special assistance available for teachers holding Basic Certificates. The resources of both may be used to assist those teachers experiencing significant problems in teaching. The institution in closest proximity to the employing school district is the first choice for district involvement; however, the school district is encouraged to make a cooperative arrangement with the institution from which the teacher graduated.

C. A Standard Certificate may be issued by the Board to the holder of a Basic Certificate upon the recommendation of the employing school district with input from a teacher preparation institution. The recommendation shall be made following the completion of two years of successful, professional growth and teaching experience and before the Basic Certificate expires.

D. The Standard Certificate shall be issued for five years and shall be valid until revoked for cause by the Board. The Standard Certificate shall be revalidated for successive five year periods if the holder verifies at least one-half time appropriate employment in education for at least three years during each five year interval. Otherwise, the certificate may only be renewed in accordance with R277-502-8.

E. Basic and Standard Certificates expire on June 30 of the year shown on the face of the certificate and may be renewed any time after January of that year. Responsibility for securing revalidation or renewal of the certificate rests upon the holder.

R277-502-5. Certificate Categories and Endorsements; Certificate Required for Employment.

A(1) Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following certificates, a person shall hold a valid certificate issued by the Board in the respective category:

(a) Early Childhood Education;
(b) Elementary Teaching;
(c) Secondary Teaching;
(d) Administrative/Supervisory;
(e) Special Education;
(f) Communication Disorders;
(g) School Counselor, School Psychologist, and School Social Worker;
(h) Library Media; and
(i) Applied Technology Education

Student teachers and interns shall also hold valid certificates issued by the Board.

(2) If a secondary or middle education teacher is assigned in a subject area for which that teacher is not endorsed, the

employing school district shall request a Letter of Authorization from the Board to continue the teacher's assignment.

(3) Special assignment teachers or teachers in other similar circumstances shall hold a Basic or Standard Certificate with endorsement(s) in one or more core curriculum subjects plus have completed not fewer than nine quarter hours of state-approved college or in-service course work in each of the subject areas in which they are assigned.

(4) A teacher may make application for an exemption of a specific subject endorsement consistent with 53A-6-101(5);

(a) Under 53A-6-101(5)(c), the evaluation shall reflect the ability of the teacher to teach the subject matter, including the required level of subject matter mastery.

(b) Exemptions granted are only for the specific class assigned; they do not allow the teacher exemption in the general subject area.

(c) Special education resource teachers assigned to teach academic subjects may apply for both a special education exemption and an academic subject exemption if the criteria are met in both areas.

(d) The exemption is valid for the duration of the specific class assignment.

B. Individuals applying for a certificate in any category shall meet the specific requirements for the specific certificate.

C. Certificates may be endorsed to indicate qualification in a specialty course or area in any category of certification. Endorsements that are required in a certification category are specified in the requirements for that certification category. An endorsement without a current certificate is not valid for employment purposes.

R277-502-6. Certification Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Basic Certificate for teaching may be issued to a graduate of a four-year teacher preparation program in another state which was, at the time of the applicant's graduation, approved by that state on the basis of standards contained in Standards for State Approval of Teacher Education, or equivalent standards. The institution conducting the teacher preparation program must be accredited by the National Council for Accreditation of Teacher Education (NCATE) or one of the six major regional accrediting associations. If the applicant has one or more years of previous teaching experience, a Standard Certificate for teaching may be issued upon the recommendation of the employing Utah school district after at least one year but no more than three years of teaching experience in the state.

R277-502-7. Renewal of Basic Certificate.

The Basic Certificate shall be issued for four years. After four years a teacher shall either be recommended for a Standard Certificate or qualify for renewal under one of the following:

A. A one-year extension under R277-502-4(B)(1).

B. A teacher who is not recommended for the Standard Certificate may apply for employment in another school district. If that school district is willing to employ the individual as a teacher, the Basic Certificate may be renewed for an additional two year period. There shall be no extensions of the Basic Certificate period beyond a total of five years.

C. If more than five years elapse before the Basic Certificate holder has completed a minimum of two years active teaching, renewal credit may be required.

R277-502-8. Renewal of Standard Certificates.

A. The Standard Certificate may be revalidated under the requirements of R277-502-4(D).

B. Certificates which have expired may be renewed by successfully completing, within the five year period prior to renewal, nine quarter hours/six semester hours of approved upper division or graduate credit. Renewal work may be college work, credit given for years of experience, or a combination thereof. Renewal activities shall be beneficial as determined by the Utah State Office of Education Certification Section and related to the education assignment or area of professional preparation.

(1) College credit: Credit for lower division courses may be awarded with the prior approval of the Board or of its designee. Two semester hours of credit are given for each school year of a minimum of half-time, contract teaching experience. Official transcripts and grade reports verifying completion of college course work become a permanent part of the file maintained on each certificated individual.

C. Credit hours for renewal of a certificate may not be held over from one renewal period to the next unless they are earned during the year that a certificate expires and are not needed for the current renewal. Such hours may be carried over to the next renewal period.

R277-502-9. Certification Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance, revalidation, and renewal of certificates and endorsements. All endorsements to which the applicant is entitled may be issued, revalidated, or renewed with the same expiration date for one certification fee. The renewal or validation of endorsements at different times may require the payments of a renewal fee for each certificate.

B. If insufficient credit is presented for a full five-year certificate, the full fee shall, nevertheless, be charged. An additional fee shall be charged if credit is later presented to extend the certificate to a full five-year period.

C. An endorsement may be added at any time, and unless the teaching certificate is reprinted, there shall be no charge. If a new certificate is issued, a fee shall be charged.

KEY: professional competency, teacher certification
August 15, 1998 53A-6-101
Notice of Continuation September 12, 1997 53A-1-401(3)
53A-17a-107(2)

R307. Environmental Quality, Air Quality.
R307-1. Utah Air Conservation Rules.
R307-1-1. Foreword and Definitions.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

Definitions contained in R307-1-1 are applicable to all rules adopted by the Air Quality Board.

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment utilized in abrasive blasting operations.

"Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

"Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

"Actual Emissions" means the actual rate of emissions of a pollutant from a source determined as follows:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the source actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Executive Secretary may presume that source-specific allowable emissions for the source are equivalent to the actual emissions of the source.

3. For any source which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the source on that date.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Adverse Impact on Visibility" means for purposes of subsection 3.11 of R307-1-3, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the mandatory Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Dried Coating" means coatings which are dried by the use of air or a forced warm air at temperatures up to 90 degrees C (194 degrees F).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Air Quality Related Values" means, as used in analyses under R307-1-3.1.3, Public Notice, those special attributes of a Class I area, assigned by a federal Land Manager, that are adversely affected by air quality.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-1-3.1.8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Application Area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.

"Appropriate Authority" means the governing body of any city, town or county.

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Asphalt Concrete" means a waterproof and durable paving material composed of dried aggregate which is evenly coated with hot asphalt cement.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the State Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Average Monthly Storage Temperature" means the average daily storage temperature measured over a period of one month.

"Basecoat" means a primary flat wood coating or coloring of panels and normally should completely hide substrate

characteristics.

"Baseline Area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established.

1. Area redesignations under section 107(d)(1) (D) or (E) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 52.21 or subsection R307-1-3.6, and would be constructed in the same state as the state proposing the redesignation.

"Baseline Concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date.

"Baseline Date":

1. Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

2. Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or subsection R307-1-3.6 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or subsection R307-1-3.6. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Batch Open Top Vapor Degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or the UACR.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Capture System" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents -Biological Exposure Indices, pages 15 - 40 (1997)."

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Class II Hard Board Paneling Finish" means finishes which meet the specifications of voluntary product standards PS-9-73 as approved by the American National Standards Institute.

"Clean Air Act" means Federal Clean Air Act as amended in 1990.

"Clear Coat" means a coating which lacks color and opacity.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is calculated by the National Weather Service from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system:

1. Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and

Escalante Valleys and valleys of the Sevier River Drainage.

2. Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

3. Area 3 includes all valleys and areas above 6500 feet above sea level.

"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels, but is also used to refer to films applied to paper, plastics, or foil.

"Coating Application System" means all operations and equipment which applies, conveys, and dries a surface coating, including, but not limited to, spray booths, flow coaters, flash off areas, air dryers and ovens.

"Cold Cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Condensor" means any device which removes condensable vapors by a reduction in the temperature of the captured gases.

"Confined Blasting" means any abrasive blasting conducted in an enclosure which significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Control System" means any number of control devices, including condensors, which are designed and operated to reduce the quantity of VOC emitted to the atmosphere.

"Conveyorized Degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Curtain Coating" means the application of a coating material to a wood substrate by means of a free-falling film of coating.

"Cutback Asphalt" means any asphalt which has been liquified by blending with petroleum solvents (diluents) or, in the case of some slow cure asphalts (road oils), which have been produced directly from the distillation of petroleum.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Dispersion Technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

1. Using that portion of a stack which exceeds good engineering practice stack height;

2. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

3. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The techniques described in this definition do not include:

A. The reheating of a gas stream following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

B. The merging of exhaust gas streams where:

(1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Air Quality Board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Air Quality Board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

C. Smoke management in agricultural or silvicultural prescribed burning programs;

D. Episodic restrictions on residential wood-burning and open burning; or

E. Techniques under 1.49.3 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Dry Cleaning Facility" means a facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, drying, and tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

"Emission" means the act of discharge into the atmosphere

of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k), Clean Air Act).

"Emulsified Asphalt" means asphalt emulsions produced by combining asphalt with water that contains an emulsifying agent.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan (including all sections within R307-1), any permit requirements established pursuant to 40 CFR 52.21 or section 3.1 of R307-1-3.

"EPA" means Environmental Protection Agency.

"Excessive Concentration" is defined for the purpose of determining good engineering practice stack height under 1.71.3 and means:

1. for sources seeking credit for stack height exceeding that established under 1.71.2, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (subsection 3.6 of R307-1-3), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 shall be prescribed by the state approval order or the federal new source performance standard that is applicable to the source category, whichever is more stringent, unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Executive Secretary, an alternative emission rate shall be established in consultation with the source owner or operator. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 for sources for which no federal new source performance standard or state approval order has been issued shall be established by the Executive Secretary in consultation with the source owner or operator.

2. for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under 1.71.2 either,

A. a maximum ground-level concentration due in whole or part to downwash, wakes or eddy affects as provided in 1.55.1, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or

B. the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan.

3. for sources seeking credit after January 12, 1983, for a stack height determined under 1.71.2 where the Executive Secretary requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in 1.71.2, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Exterior Single Coat" means the same as topcoat but is applied directly to the metal substrate omitting the primer application.

"Extreme Performance Coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Fabric Coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filler" means a type of coating used to fill pores, voids, and cracks in wood to provide a smooth surface. It can also be used to accentuate the grain of natural hardwood veneers.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Flat Wood Coating" means the surface coating of any flat wood products.

"Flexographic Printing" means the application of works, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Freeboard Ratio" means the freeboard height divided by the width of the degreaser.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Good Engineering Practice (GEP) Stack Height" means the greater of:

1. Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack;

2. Where H_g=good engineering practice stack height measured from the ground-level elevation at the base of the stack; H=height of nearby structure(s) measured from the ground-level elevation at the base of the stack; L=lesser dimension (height or projected width) of nearby structure(s), and provided that the Executive Secretary may require the use of a field study or fluid model to verify GEP stack height for the source:

A. for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all required air quality permits or approvals, $H_g = 2.5L$ provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

B. for all other stacks, $H_g = H+1.5L$; or

3. The height demonstrated by a fluid model or a field study approved by the Executive secretary, which ensures that the emissions from the stack do not result in excessive concentrations of air contaminants as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Groove Coat" means a flat wood coating which covers grooves cut into the panel to assure that the grooves are compatible with the final surface color.

"Hardwood Plywood" means plywood whose surface layer is a veneer of hardwood.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Hot Well" means the reservoir of a condensing unit receiving the warm condensate consisting primarily of water from the condenser.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Indirect Source" means a building, structure or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Ink" means a flat wood coating used to put a decorative design on printed panels. It can also produce special appearances on natural hardwood plywood.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"Interior Single Coat" means a single film of coating applied to internal parts of large appliances that are not normally visible to the user.

"Knife Coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Large Appliances" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

"Lowest Achievable Emission Rate (LAER)", as defined in Section 173(2), Clean Air Act, means for any source, that rate of emissions which reflects:

1. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

2. The most stringent emission limitation which is achieved in practice by such class or category of source,

whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

"Low Organic Solvent Coating" means coatings which contain less organic solvents than the conventional coatings used by industry. Low organic solvent coatings include water-borne, higher-solids, electrodeposition, and powder coatings.

"LPG" means liquified petroleum gas such as propane or butane.

"Magnet Wire Coating" means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

1. routine maintenance, repair and replacement;

2. use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

3. use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

4. use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

5. use of an alternative fuel or raw material by a source:

A. which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

B. which the source is otherwise approved to use;

6. an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

7. any change in ownership at a source.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to these rules:

1. any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

A. any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

B. any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

C. any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

2. any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

3. the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum or reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Major Source" means, for the purposes of Subsection R307-1-3.6:

1. any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons

of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. any other source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant; or

3. a source which does not otherwise qualify as a major source as defined in this paragraph, but which is physically changed, which change itself would constitute a major source.

4. a source which is major for volatile organic compounds is major for ozone.

5. The fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

"Metal Furniture Coating" means the surface coating of any furniture made of metal or any metal part which will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

"Modification" means any planned change in a source which results in a potential increase of emission.

"Multiple Nozzles" means a group of two or more nozzles being used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Natural Finish Hardwood Plywood Panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

"Nearby" as used in subpart 2 of the definition "Good Engineering Practice (GEP) Stack Height" is defined for a specific structure or terrain feature and

1. for the purpose of applying the formulae provided in subpart 1 of the definition "Good Engineering Practice (GEP) Stack Height", means that distance up to five times the lesser of the height or the width dimension of a structure, but not to be greater than 1/2 mile, and

2. for conducting demonstrations using subpart 3 of the definition "Good Engineering Practice (GEP) Stack Height", means not greater than 1/2 mile, except that the portion of terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if such a feature achieves a height 1/2 mile from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in subpart 2.B of the definition "Good Engineering Practice (GEP) Stack Height" of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base from the stack.

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

1. any increase in actual emissions from a particular physical change or change in method of operation at a source; and

2. any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

A. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

B. An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

C. An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used

to evaluate this increase or decrease.

D. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

E. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable at and after the time that actual construction on the particular change begins; and

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(4) It has not been relied on in issuing any permit under Section R307-1-3.1 nor has it been relied on in demonstrating attainment or reasonable further progress.

F. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means for any pollutant, "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA to be reliable) to exceed any National Ambient Air Quality Standard for such pollutant" (Section 171, Clean Air Act). Such term includes any area designated as nonattainment under Section 107, Clean Air Act.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Open Top Vapor Degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"Packaging Rotogravure Printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels.

"Paper Coating" means uniform distribution of coatings put on paper and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations. (Saturation means dipping the web into a bath).

"Particle Board" means a manufactured board made of individual particles which have been coated with a binder and formed into flat sheets by pressure.

"PM10 Nonattainment Area" means Salt Lake County, Utah County, or Ogden City.

"PM10 Particulate Matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10. It includes sulfur dioxide and nitrogen oxides.

"Part 70 Source" means any source subject to the permitting requirements of R307-15.

"Patch Mix" means a mixture of an asphalt binder and aggregate in which cutback or emulsified asphalts are used either as sprayed liquid or as a binder.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"Penetrating Prime Coat" means an application of low-viscosity liquid asphalt to an absorbent surface in order to prepare it for paving with asphaltic concrete.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Petroleum Refinery Complex" means any source or installation engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement, or reforming of unfinished petroleum derivatives.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Pressure Head Coating" means the application of a coating material to a wood substrate by means of a pressure head coater where coating material is metered into a pressure head and forced through a calibrated slit between two knives.

"Prime Coat" means the first film of coating applied in a two-coat operation.

"Primer" means a flat wood coating used to protect the wood from moisture and to provide a good surface for further coating applications.

"Printed Interior Panels" means panels whose grain or natural surface is obscured by fillers or basecoats upon which a simulated grain or decorative pattern is printed.

"Process Drain" means any drain used in a refinery complex on equipment which processes, transfers a volatile

organic compound or mixture of volatile organic compounds.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Process Unit Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back in operation.

"Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting employees from excessive VOC exposure.

"Publication of Rotogravure Printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

"Reactor" means any vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 20 cubic feet, a minimum burn rate less than 5 kg/hr as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kg. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Roll Coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

"Roll Printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

"Rotogravure Coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Rotogravure Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves a recessed image area in the form of cells.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Sealer" means a type of coating used to seal off substances in the wood which may affect subsequent finishes as well as protect the wood from moisture.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Separation Operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
PM10 Particulate matter: 15 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

2. For purposes of Section R307-1-3.6 it shall also additionally mean for:

a. A rate of emissions that would equal or exceed any of the following rates:

Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl Chloride: 1 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen Sulfide: 10 tpy
Total reduced sulfur (including H2S): 10 tpy
Reduced sulfur compounds (including H2S): 10 tpy

b. In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act not listed in 1 and 2 above, any emission rate.

c. Notwithstanding the rates listed in 1 and 2 above, any emissions rate or any net emissions increase associated with a

major source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/cubic meter, (24-hour average).

"Single Coat" means a single film of coating applied directly to the metal substrate omitting the primer application.

"Sole Source of Heat " means the residential solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Solvent Metal Cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Specialty Printing Operations" means all gravure and flexographic operations which print a design or image, excluding publication gravure and packaging gravure printing. Specialty printing operations include, among other things, printing on paper cups and plates, patterned gift wrap, wallpaper, and floor coverings.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Stack in Existence" means that the owner or operator had

1. begun, or caused to begin, a continuous program of physical on-site construction of the stack, or

2. entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"Stain" means a nonprotective flat wood coating which colors the wood surface without obscuring the grain.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Synthesized Pharmaceutical Manufacturing" means the manufacture of pharmaceutical products by chemical synthesis.

"Temporary" means not more than 180 calendar days.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1997), pages 15 - 40."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1997), pages 15 - 40."

"Tile Board" means paneling that has a colored waterproof surface coating.

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Unconfined Blasting" means any abrasive blasting which is not confined blasting as defined above.

"Vacuum Producing System" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vinyl Coating" means applying a decorative or protective top coat, or printing on vinyl coated fabric or vinyl sheets.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), in effect on September 24, 1997, and published at 62 Fed. Reg. 164 (August 25, 1997) is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Waxy, Heavy Pour Crude Oil" means a crude oil with a

pour point of 50 degrees F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for pourpoint of petroleum oils."

"Wet Abrasive Blasting" means any abrasive blasting using compressed air as the propelling force and sufficient water to minimize the plume.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-1-2. General Requirements.

2.1 Air Pollution Prohibited. Emission of air contaminants in sufficient quantities to cause air pollution as defined in subsection 1.11 of R307-1-1 is prohibited. The State statute provides for penalties up to $50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

2.2 Periodic Reports of Emissions and Availability of Information. The owner or operator of any stationary air-contaminant source in Utah shall furnish to the Board the periodic reports required under Section 19-2-104(1)(c) and any other information as the Board may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

2.3 Variances Authorized

2.3.1 Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

A. to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the Executive Secretary and approved by the Board.

B. to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

C. to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

2.3.2 Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

2.4 General Burning.

As provided in Section 19-2-114, the provisions of R307-1-2.4.1 through R307-1-2.4.5 below are not applicable to:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

See also Section 11-7-1(2)(a).

2.4.1 Community Waste Disposal. No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

2.4.2 General Prohibitions. No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of Subsections R307-1-2.4.3 and R307-1-2.4.4.

2.4.3 Permissible Burning - Without Permit. When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

A. in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

B. campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;

C. in indoor fireplaces and residential solid fuel burning devices except as provided in Subsection R307-17-3 of these regulations;

D. properly operated industrial flares for combustion of flammable gases; and

E. burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

2.4.4 Permissible Burning - With Permit. Open burning is authorized by the issuance of a permit as specified in R307-1-2.4.4.B when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

A. Individual permits for the types of burning listed in R307-1-2.4.4.B may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

B. Types of burning for which a permit may be granted are:

(1) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(2) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other

materials which can cause severe air pollution are not used to start fires or keep fires burning;

(3) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;

(4) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;

(5) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(a) in any area of the state, the local county fire marshall has established a 30 day period between March 30 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshall has established, if allowed by the state forester under Section 65A-8-9, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;

(b) such burning occurs during the period established by the local county fire marshall;

(c) materials to be burned are thoroughly dry;

(d) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

C. The Board may grant a permit for types of open burning not specified in R307-1-2.4.4.B on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.

2.4.5 Special Conditions. Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary.

2.5 Confidentiality of Information

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the executive secretary and Board shall so treat such information. If no claim is made at the time of submission, the executive secretary may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the executive secretary or Board shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

2.5.1 The following proceedings and actions are designated to be conducted either formally or informally as required by Section 63-46b-4:

A. Notices of Intent and Approval Orders shall be processed informally using the procedures identified in Section R307-1-3. Appeals of denials of or conditions in an approval order shall be conducted formally.

B. Issuance of Notices of Violations and Orders are exempt under Section 63-46b-1(2)(k). Appeals of Notices of Violation and Orders shall be processed as formal proceedings.

C. Requests for variances shall be processed informally using the procedures in Section 19-2-113 and Subsection R307-1-2.3.

D. Qualification for Tank Vapor Tightness Testing shall be conducted informally using the procedures identified in Section R307-3-4.

E. Certification of Asbestos Contractors shall be conducted informally using the procedures identified in Section R307-1-8.

F. Certification and accreditation under R307-840, Lead-Based Paint, as well as revocation, denial and modification of such certification shall be conducted as informal proceedings.

G. Any other request or approvals for experiments, testing, control plans, etc., shall be conducted informally using the procedures identified in R307-1.

2.5.2 At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

2.5.3 Rules for conducting formal proceedings shall be as provided in Section 63-46b-3 and in Sections 63-46b-6 through 63-46b-13. In addition to the procedures referenced in Subsection R307-1-2.5.1 above, the procedures in Sections 63-46b-3 and 63-46b-5 apply to informal proceedings.

2.5.4 Declaratory Orders. In accordance with the provisions of Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Sections 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under Subsection R307-1-2.5.2 above. No declaratory orders will be issued in the circumstances described in Subsection 63-46b-21(3)(a). Intervention rights and other procedures governing declaratory orders are outlined in Section 63-46b-21.

R307-1-3. Control of Installations.

3.1 Notice of Intent and Approval Order

3.1.1 Notice of Intent Required.

A. Except for the exemptions listed herein, any person intending to construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution or to make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or any person intending to install a control apparatus, or other equipment intended to control emission of air contaminants from a stationary source, shall submit to the executive secretary a notice of intent and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall include the information described in R307-1-

3.1.6 to determine whether the proposed construction, installation, modification, relocation or establishment will be in accord with applicable requirements of these rules. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary shall advise the applicant of any deficiency in the notice of intent or the information submitted. The executive secretary shall transmit to the Administrator, EPA, a copy of each notice of intent for each major source or major modification and provide notice to the Administrator, EPA, of every action related to the consideration of such permit.

B. Stationary sources that were in existence prior to November 29, 1969, that have not made any modifications or relocations since that date are not required to submit a notice of intent or to have an approval order; however, these sources are subject to all other applicable requirements of Title R307 and actions taken by the executive secretary and the Board pursuant to existing statutory authorities.

3.1.2 Within 90 days of receipt of a complete application including all the information described in R307-1-3.1.6, the executive secretary shall either issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of it is inadequate to meet the applicable requirements of Title R307, or issue an order permitting the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-1-3.1.4 and R307-1-3.1.8. If more time is needed to review the proposal, it shall not exceed three 30-day extensions.

3.1.3 Public Notice.

A. Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary shall advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment. A copy of the notice of intent to approve or disapprove shall be sent to the applicant, the Administrator, EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification. Any expected consumption of the maximum allowable increases as stated in R307-1-3.6 and proposed emission limitations, emission amounts, and any operating limitations shall be included in the notice. The executive secretary shall consider any analysis performed by a Federal Land Manager and provided to the executive secretary within the public comment period. If the executive secretary concurs with a demonstration by the Federal Land Manager that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) in any Federal Class I area, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases, the executive secretary shall not issue an approval order for the source or modification.

B. Opportunity for Review and Comment.

(1) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analyses of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(2) Public Comment Period.

(a) A 10-day public comment period shall be required before an approval order is issued for a new source or for an existing source proposing to modify or relocate, if the source, modification, or relocation is not:

(i) subject to the requirements of R307-1-3.6, Prevention of Significant Deterioration of Air Quality (PSD);

(ii) subject to the requirements of R307-15, Operating Permit Requirements;

(iii) a synthetic minor source in accordance with R307-15-4(6);

(iv) located in a nonattainment area or a maintenance area for any pollutant; or

(v) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(b) A request to extend the length of the comment period, up to 30 days, may be submitted anytime within 10 days of the date a notice is published in a newspaper.

(c) Those sources not subject to the 10-day public comment period are subject to the requirement in R307-1-3.1.3.B(2)(d) below.

(d) For any notice of intent proposal not subject to R307-1-3.1.3.B(2)(a), a 30-day public comment period is required before an approval order is issued or denied.

(e) A request for a hearing on the executive secretary's proposed approval or disapproval order may be submitted anytime within 10 days or 15 days of the date of a notice in a newspaper under provisions of the appropriate rule, R307-1-3.1.3.B(2)(a)or(d). The hearing shall be held in the area of the proposed construction, installation, modification, relocation or establishment. Any comments or statements received shall be considered before an order is issued or denied.

(f) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

3.1.4 Whenever the executive secretary determines that the information submitted under provisions of R307-1-3.1.6, with such revisions as may be required, are in accord with applicable requirements, the executive secretary shall issue an order permitting the proposed construction, installation, modification, relocation or establishment, with the further stipulation that all required facilities be adequately and properly maintained. Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of Title R307 or the State Implementation Plan. To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of Title R307. Subsequent detailed plans will then be processed as prescribed in this

paragraph. For staged construction projects the previous determination under R307-1- 3.1.8 shall be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

3.1.5 Approval orders issued by the executive secretary in accordance with the provisions of R307-1- 3.1 shall be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

3.1.6 The following information, where applicable, shall be submitted with the notice of intent:

A. A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

B. Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

C. Size, type and performance characteristics of any control apparatus.

D. Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

E. The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

F. The typical operating schedule.

G. A schedule for construction.

H. Any plans, specifications and related information which are in final form at the time of submission of notice of intent.

I. Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

3.1.7 Exemptions and Special Provisions.

A. Small Source Exemption - De minimis Emissions.

(1) A new or existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the following conditions are met:

(a) it is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(b) its potential to emit does not make it a stationary major source or require emission offset provisions as required by R307-1-3.3.3 for a new or modified source;

(c) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO_2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(d) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(e) its actual emissions are less than 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.A(1)(c) or (d) and less than 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.A(1)(c) or (d); and

(f) for purposes of determining applicability of R307-1-3.1.7.A, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations.

(2) Small Source Exemption - Registration Required in Nonattainment and Maintenance Areas. The owner or operator of a stationary source located in a nonattainment area or a maintenance area for the air contaminants, including ozone precursors, that is claiming an exemption under R307-1-3.1.7.A shall submit to the executive secretary a written registration notice. An existing source shall submit this registration notice no later than March 15, 1997. A new source shall submit the registration notice prior to commencing construction. The notice shall include the following minimum information:

(a) identifying information including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(3) The owner or operator of a temporary source that is claiming exemption under R307-1-3.1.7.A must still comply with the conditions of R307-1-3.1.9.

B. Flexibility Changes.

(1) A change to an existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the source is covered by an approval order and the change satisfies the following conditions:

(a) the change is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412,

(b) the increases in allowable emissions from the change since the issuance of the current approval order for the source are less than:

(i) 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(ii) 500 pounds per year of any hazardous air pollutant and 2000 pounds per year of any combination of hazardous air pollutants; and

(iii) 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.B(1)(b)(i) or (ii) and 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.B(1)(b)(i) or (ii);

(c) for purposes of determining applicability of R307-1-3.1.7.B, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the enviroment without chemical change, as

well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations;

(d) the increase of allowable emissions from the change is accompanied by an equivalent or greater decrease of allowable emissions of the same air contaminants within the source at the time of the change, so long as the emissions decrease is enforceable in an approval order;

(e) the net emissions increase at the source, as defined in R307-1-1, as a result of the change shall not constitute a major modification, as defined in R307-1-1; and

(f) The owner or operator claiming an exemption pursuant to R307-1-3.1.7.B submits to the executive secretary a written notice prior to the change. The notice shall include the information specified in R307-1-3.1.7.A(2)(a) through (f) and a description of where the owner or operator will reduce allowable emissions at least equal to any increase in emissions from the change.

(2) The approval order shall reflect emission increases and decreases of emitting units at the source resulting from the change.

(3) A source must go through the full Notice of Intent and Approval Order requirements of R307-1-3.1 to change any limitation which a source is relying on, either to avoid being classified as a major source, or to avoid having a change in emissions be considered a major modification.

(4) No comment period under R307-1-3.1.3 is required for this approval order change and update.

C. Other Exemptions. Sources listed in R307-1-3.1.7.C(1) through (6) are exempt from the notice of intent and approval order requirements of R307-1-3.1.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah is exempt, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6 is exempt.

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour is exempt.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products are exempt.

(5) New parking areas of less than 600 vehicles capacity or modified parking areas increasing capacity by less than 350 vehicles are exempt.

(6) Emissions of 1,1,1-trichloroethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane, 1,2-dichloro-1,1,2,2-tetrafluoroethane, methane, ethane, and chloropentafluoroethane are exempt. However, the owner or operator of a source emitting 10 tons per year or more of any of these compounds must submit a notice of intent to the executive secretary prior to construction of the source and an annual report of emissions thereafter.

D. Exemptions from the Notice of Intent and Approval Order provisions of R307-1-3.1 for Replacement-in-Kind Equipment.

(1) Applicability. The owner or operator of a stationary source of air contaminants who modifies any process or replaces any control apparatus that is covered by an existing approval order, a previous approval order that has been superseded by an operating permit, or a requirement contained in a State Implementation Plan is exempt from the notice of intent and approval order requirements of R307-1-3.1, when the replacement-in-kind equipment meets all of the following conditions:

(a) potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the control apparatus or process equipment is essentially the same as that being replaced and is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(e) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source proposing to replace control apparatus or process equipment by in-kind equipment shall submit a written notification to the executive secretary for approval prior to initiation of replacement. The notification shall contain a description of the replacement-in-kind, to include the control capability of any control apparatus and a demonstration that the conditions of R307-1-3.1.7.D(1) are met.

(b) If the replacement-in-kind meets the conditions of R307-1-3.1.7.D(1), the executive secretary will update the appropriate approval order and notify the owner or operator. No public comment period under R307-1-3.1.3 is required.

E. Exemptions from Notice of Intent and Approval Order provisions of R307-1-3.1 for Reduction or Elimination of Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants covered by an existing approval order or a State Implementation Plan that reduces or eliminates air contaminants by changing, substituting, or eliminating process raw materials or process equipment, or uses a more efficient process design, is exempt from the notice of intent and approval order requirements of R307-1-3.1 when all the following are met:

(a) there is a permanent reduction of air contaminants per year that is enforceable by an approval order;

(b) there are no new air contaminants emitted as a result of the changes; and

(c) the changes do not violate any provision of Title R307 rules.

(2) Procedures for the Reduction or Elimination of Air Contaminants Exemption. In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source making changes as described in R307-1-3.1.7.E(1) shall submit a written description of the changes to the executive secretary

no later than 60 days after the changes are made. The approval order will be updated by the executive secretary to reflect the reductions and other changes; no comment period under R307-1-3.1.3 is required.

F. Any owner or operator of a source submitting an inventory as required in R307-1-3.5 shall include in that inventory an estimate of all emissions from the above exempted activities, using appropriate emission factors and estimating techniques.

G. Any control apparatus installed on a source that is exempted under R307-1-3.1.7 shall be adequately and properly maintained. The owner or operator of any new or existing emission unit that is exempted under R307-1-3.1.7 is required to comply with all other applicable rules in Title R307.

H. If the executive secretary has reason to believe, after completion of an appropriate analysis and evaluation in consultation with the source owner or operator, that the emissions from a source described in R307-1-3.1.7.A, B C, D, and E above are not meeting any specified approval order or State Implementation Plan limitation, or create an adverse impact to the environment, or would be injurious to human health or welfare, then the notice of intent and approval order provisions of R307-1-3.1 will apply.

3.1.8 The executive secretary shall issue an approval order if it is determined through plan review that the following conditions have been met:

A. The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology except as otherwise provided in Title R307.

B. The proposed installation will be in accord with applicable requirements of: Utah Title R307; National Standards of Performance for New Stationary Sources; National Primary and Secondary Ambient Air Quality Standards; National Emission Standards for Hazardous Air Pollutants; new source review criteria; maximum allowable increase and maximum allowable concentration requirements for Prevention of Significant Deterioration; the State Implementation Plan for the area, if the area is classified as a nonattainment or maintenance area; and new source requirements for nonattainment areas under the Federal Clean Air Act.

C. The executive secretary shall issue an approval order under R307-1-3.6.5 for a major source or major modification which consumes more than 50% of the increments in R307-1-3.6.3 only after receiving the approval of the Board.

3.1.9 The owner or operator of a source previously approved under R307-1-3.1 or in a State Implementation Plan may temporarily relocate and operate the source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary shall evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be sent to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. To issue a written approval or disapproval, the executive secretary is not required to submit the temporary relocation proposal for public comment.

3.1.10 The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-1-3.1, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-1-3.1.3. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

3.1.11 At a time that a source or modification becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

3.1.12 Low Oxides of Nitrogen Burner Technology.

A. All sources excluding non-commercial residential dwellings shall install oxides of nitrogen control/low oxides of nitrogen burners or controls resulting from application of an equivalent technology, as determined by the Executive Secretary, whenever existing fuel combustion burners are replaced, unless such replacement is not physically practical or cost effective. The request for an exemption shall be presented to the Executive Secretary for review and approval.

B. Contingency Requirement for Ozone Nonattainment Areas and Salt Lake and Davis Counties. If the Contingency Requirements for nitrogen oxides are triggered as outlined in Section IX.D.2.h(2) of the State Implementation Plan, all existing sources excluding non-commercial residential dwellings shall install either low oxides of nitrogen burner technology as described in R307-1-3.1.12(a), unless such requirement is not physically practical or cost effective, or controls resulting from application of an equivalent technology, both of which shall be determined by the executive secretary. All sources required to install new controls under R307-1-3.1.12.B shall submit, within two months after the trigger date, either a schedule for installing the equipment or a request for an exemption. The required equipment shall be operational as soon as practicable or within a reasonable time agreed upon by the source and the executive secretary.

3.2 Nonattainment Area Requirements And PM10 Nonattainment Area Requirements - Existing Sources.

3.2.1 Particulate Emission Limitations And Operating Parameters (TSP).

A. Existing sources located in or affecting areas of nonattainment shall use reasonably available control measures

to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in this paragraph constitute, in the judgment of the Board, reasonably available control measures necessary to insure attainment and maintenance of the NAAQS as of the date of promulgation of these regulations. Specific limitations for installations within a source listed below which are not specified will be set by order of the Board. Specific limitations for installations within a source listed below may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

B. The owner or operator of any source listed in this paragraph shall not allow exceedance of the emission limitation or violation of any other listed requirement (See schedule for compliance listed in paragraph 3.2.2). The requirements listed for the sources in Weber County apply unless modified by an approval order or compliance order issued after February 16, 1982.

TABLE 1

IDENTIFICATION OF SOURCE (SOURCES 25 TONS/YEAR OR GREATER ACTUAL EMISSIONS)	EMISSION LIMITATIONS
WEBER COUNTY (TSP)	
1. Farmers Grain Coop unloading/loading/ cleaning and grinding stacks/vents	20% opacity each stack/vent
2. Fife Rock Products Asphalt Plant (Hot mix dryer)	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
3. Interpace Corporation - 4/2/81 Grinding and screening	20% opacity (vents and fugitive emissions)
4. Parsons Asphalt Plant	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
5. Pillsbury Co. Loading, milling, unloading	20% opacity each vent
6. Teledyne Incinerator	0.080 gr/dscf, 20% opacity
7. Gibbons and Reed Asphalt Plant - 4/2/81	0.030 gr/dscf, 20% opacity

3.2.2 Compliance Schedule (TSP). The owner or operator of an existing installation which is a source of a pollutant in a nonattainment area for the pollutant, or which has significant impact (Based on the increment levels in subparagraph 3.3.2.A) upon a nonattainment area, is required to achieve the established emission limitation or other requirements established by these regulations as expeditiously as practicable but no later than December 31, 1982, or such later date as may be specified by Congress or EPA under the Clean Air Act. Within 180 days after the effective date of a regulation establishing a standard of pollutant control pursuant to an emission limitation under paragraph 3.2.1 or paragraph 4.1.1 of R307-1-4, the owner or operator of an existing installation not meeting these requirements must submit a notice of intent as outlined in subsection 3.1 together with a compliance schedule. The compliance schedule shall contain proposed interim measures to control and identify the degree of emission reduction to be achieved by each such interim measure of control.

3.2.3 Compliance Testing (TSP)

A. Testing Methodology. Except as otherwise provided in this paragraph 3.2.3, compliance testing for gravimetric emission limitations for particulate shall be pursuant to EPA reference Method 5 or EPA reference Method 17 where appropriate and approved by the Executive Secretary. Where EPA reference Method 5 is used for compliance testing, determination of compliance with gravimetric emission limitations shall be made through the use of front half catch. The Executive Secretary may require that Method 5 full train analysis be conducted and that back half data also be submitted but only for information purposes. Such information shall not be used to determine compliance with gravimetric emission limitations. EPA reference Method 1 shall be used to select the sampling site and number of traverse sampling points. Where necessary for determination of stack gas velocities, EPA reference Method 2 shall be used. Where necessary for determination of dry molecular weight, EPA reference Method 3 shall be used. Where necessary for determination of moisture content in stack gases EPA reference Method 4 shall be used. All EPA reference methods referred to in this paragraph 3.2.3 are those found in 40 CFR Part 60 Appendix A.

Except as provided below in these regulations any alternate test methods or sampling methods may be used with the approval of the Executive Secretary, provided, however, that if such reference tests or sampling methods are used to test compliance with federal law they may be used only if approved, in writing, by the Administrator of EPA or his representative.

B. Special Sampling and Compliance Testing Requirements for Fossil-Fuel Fired Power Plants. Method 5 or EPA reference Method 17 where appropriate (only when stack temperatures do not exceed 320 degrees F) and approved by the Executive Secretary shall be run for fossil-fuel fired power plants as modified by 40 CFR, Part 60, subpart D or Da whichever is applicable. Method 9 shall be run for opacity.

C. Exceptions for Special Sampling and Testing Conditions for Performance for Incinerators. Method 5 shall be run for incinerators as modified by 40 CFR, Part 60, Subpart E.

D. Special Conditions for Sampling for Portland Cement Plants. Method 5 or EPA Reference Method 17 where appropriate and approved by the Executive Secretary shall be run for Portland Cement Plants. If compliance is tested by use of Method 5, Method 5 shall be modified as provided in 40 CFR, Part 60, Subpart F.

3.2.4 Particulate Emission Limitations and Operating Parameters (PM10)

All sources with emissions of 25 tons per year or more (combinations of sulfur dioxide, oxides of nitrogen, and PM10) in areas located in or affecting PM10 Nonattainment Areas in Salt Lake and Utah Counties shall meet the emission limitations and operating parameters contained in Section IX, Part H, of the Utah State Implementation Plan (SIP). Existing sources located in or affecting PM10 Nonattainment Areas shall use reasonably available control measures to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in the SIP constitute, in the judgment of the Board, reasonably available control measures necessary to insure attainment and maintenance of the NAAQS not later than December 31, 1994. Specific limitations for installations within a source listed in the SIP which are not specified will be set by

order of the Board. Specific limitations for installations within a source may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

3.2.5 Compliance Testing (PM10). Compliance testing for the PM10, sulfur dioxide, and oxides of nitrogen emission limitations shall be done in accordance with Section IX, Part H of the SIP. PM10 compliance shall be determined from the results of EPA test method 201 or 201a. A backhalf analysis shall be performed for each PM10 compliance test in accordance with a method approved by the Executive Secretary for inventory purposes. For sources not requiring changes to their process or air pollution control devices to achieve compliance with the emission limitations contained in these regulations, compliance testing shall be scheduled with the Executive Secretary within three months after promulgation of this Section 3.2.5. For Utah County sources listed in Section IX, Part H.1 of the SIP which need to make major changes to comply, a construction/installation schedule for demonstration of compliance with limitations contained in the SIP, shall be submitted by the owner/operator by February 15, 1991. Those sources located in Salt Lake and Davis County listed in Section IX, Part H.2 of the SIP which need to make major changes to comply shall submit to the Executive Secretary a construction/installation schedule for demonstration of compliance with limitations contained in the SIP within three months after the effective date of this Section 3.2.5. for approval. Those sources making major changes of process equipment or air pollution control equipment shall submit a notice in accordance with Section 3.1, UACR, for the purpose of meeting the emissions limitations contained in Section IX, Part H of the SIP and receive approval from the Executive Secretary. The schedule indicated above shall result in demonstration of compliance with the limitations by December 31, 1992, unless an alternate schedule has been approved by the Executive Secretary. The alternate schedule shall be approved by the Executive Secretary if the owner/operator demonstrates that the schedule or implementation of control measures is as expeditious as practicable, but extends beyond December 31, 1992. Any submittal requesting an alternate schedule shall be done in accordance with the requirements of the Federal Clean Air Act, and shall be consistent with the SIP demonstration of attainment by December 31, 1994.

3.2.6 Compliance Schedule (PM10). The owner or operator of an existing installation listed in the SIP is required to achieve the emission limitation or other requirements established by the SIP as expeditiously as practicable, but no later than December 31, 1992. For those sources granted an alternate schedule in accordance with Section 3.2.5, compliance with the limitations shall be demonstrated as provided in the approved schedule. Until the time a source is required to demonstrate compliance with the limitations in the SIP, the source shall comply with the applicable provisions of the existing TSP limitations and operating parameters listed in the Utah Air Conservation Regulations dated April 1, 1990, or existing approval orders.

3.2.7 Salting and Sanding.

A. Any person who applies salt, crushed slag, or sand to roads in Salt Lake, Davis or Utah Counties shall maintain records of the material applied. For salt, the records shall include the quantity applied, the percent by weight of insoluble solids in the salt, and the percentage of the material that is sodium chloride. For sand or crushed slag the records shall include the quantity applied and the percent by weight of fine material which passes the number 200 sieve in a standard gradation analysis. All records shall be maintained for a period of at least two years, and the records shall be made available to the Executive Secretary or his designated representative upon request.

B. After October 1, 1993, any salt applied to roads in Salt Lake, Davis, or Utah Counties must be at least 92% sodium chloride (NaCl).

C. After October 1, 1993, any person who applies crushed slag, sand, or salt that is less than 92% sodium chloride to roads in Salt Lake, Davis, or Utah Counties must either:

1. demonstrate to the Board that the material applied has no more PM10 emissions than salt which is at least 92% sodium chloride; or

2. vacuum sweep every arterial roadway (principle and minor) to which the material was applied within three days of the end of the storm for which the application was made. For the purpose of this rule, the term "arterial roadway" shall have the meaning outlined in U.S. DOT Federal Highway Administration Publication No. FHWA-ED-90-006, Revised March 1989, "Highway Functional Classification: Concepts, Criteria, and Procedures" as interpreted by Utah Department of Transportation and shown in the following maps: Salt Lake Urbanized Area, Provo-Orem Urbanized Area, and Ogden Urbanized Area (1992 or later).

3. In the interest of public safety, any person who applies crushed slag and/or sand to arterial roadways because salt alone would not ensure safe driving conditions due to steepness of grade, extreme weather, or other reasons, may petition the Board for a variance from the sweeping requirements in R307-1-3.2.7.C.2. Specifically excluded from these sweeping requirements are all canyon roads and the portion of Interstate 15 near Point of the Mountain.

3.3 Requirements for Nonattainment Areas and Salt Lake City and Ogden Maintenance Areas for Carbon Monoxide - New and Modified Sources.

3.3.1 Emission Limitations. Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307-1, Utah Air Conservation Regulations, and R307-2, Utah State Implementation Plan. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements listed in paragraph 3.3.3. The emission limitations shall be stated as a condition of the approval order.

3.3.2 Review of Major Sources of Air Quality Impact. Every major new source or major modification must be reviewed by the Executive Secretary to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the Executive

Secretary as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

A. If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE 2

MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT
BY AVERAGING TIME

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

B. If the Executive Secretary finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the Executive Secretary shall approve the proposed source if and only if:

(1) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(2) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(3) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

C. If the Executive Secretary finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(1) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(2) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable Utah Air Conservation Regulations and Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, the Utah regulations, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(3) emission offsets to the extent provided in paragraph 3.3.3 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(4) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(5) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

D. A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in subparagraph 3.3.2.A to be exceeded in the nonattainment or maintenance area is subject to the requirements of subparagraph 3.3.2.C.

3.3.3 Offset Requirements.

A. General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or the Utah Air Conservation Rules and State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of paragraphs 3.3.3.A(1) and (2).

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990.

B. PM10 Nonattainment Areas.

New sources which have a potential to emit, or modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in R307-1-3.3.3.B(1) below, shall obtain an enforceable offset as defined in R307-1-3.3.3.B(2) and R307-1-3.3.3.B(3).

(1) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(2) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(3) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In

areas which are nonattainment for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-1-3 shall apply.

C. Ozone Nonattainment Areas and Davis and Salt Lake Counties. New sources and modifications to existing sources as defined and outlined in Section 182 of the Clean Air Act shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants. As outlined in Section 182 of the federal Clean Air Act, for moderate areas, the emission offset ratio must be at least 1.15:1.

(1) Ozone Maintenance Plan; Salt Lake and Davis Counties. In the event that the contingency measures described in Section IX, Part D.2.h.(3) and of the State Implementation Plan are triggered, the offset requirement in R307-1-3.3.3.C(2) shall apply to emissions of both volatile organic compounds and oxides of nitrogen.

(2) The emission offset ratio must be at least 1.2:1, and offset must be obtained for the same pollutant for which the source or modification has been deemed "major". For the purposes of R307-1-3.3.3.C(2), the term "major" shall mean: any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of either volatile organic compounds or oxides of nitrogen; or a modification to an existing source if the net emissions increase in either volatile organic compounds or oxides of nitrogen is at least 25 tons per year.

3.3.4 Construction in Stages. When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of subsection 3.3 of these regulations.

3.3.5 Baseline for Determining Credit for Emission and Air Quality Offsets. The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

3.3.6 Banking of Emission Offset Credit. Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51.165, Appendix S. To preserve banked emission reductions, the Executive Secretary must identify them in either the Utah SIP or an order issued pursuant to Subsection 3.1 of these rules and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

3.4 Emission Testing

3.4.1 Emission testing will be required of all sources with established emission limitations at least once every five years. For sources located in nonattainment areas, emission testing will be required at least once every five years or more frequently as specified in Section IX, Part H of the Utah State Implementation Plan (SIP) adopted by the Air Quality Board, or by the Executive Secretary if he has reason to believe that the source is not meeting its emission limitation. Sources approved in accordance with subsection 3.1 will be tested within six months of start-up. Sources for which emission limitations are established pursuant to paragraph 3.2.1 which do not require modification will be tested within one year of the effective date of these regulations. In addition, if the Executive Secretary has reason to believe that an applicable emission limitation is being exceeded (i.e., through visible emission observations and monitoring data, etc.) he may require the owner or operator to perform such emission testing as is necessary to determine actual compliance status. The Board may grant exceptions to the mandatory testing requirements of this paragraph 3.4.1 which are not inconsistent with the purposes of these regulations.

3.4.2 At least 30 days prior to conducting any emission testing required under any part of these regulations, the owner or operator shall notify the Executive Secretary of the date, time and place of such testing and, if determined necessary by the Executive Secretary, the owner or operator shall attend a pretest conference.

3.4.3 All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combustion of fuels, use raw materials, and maintain process conditions representative of normal operations, and shall operate under such other relevant conditions as the Executive Secretary shall specify.

3.4.4 The Executive Secretary may reject emissions test data if they are determined to be incomplete, inadequate, not representative of operating conditions specified for the test, or if the State was not provided an opportunity to have an observer present at the test.

3.5 Emission Inventories.

3.5.1 Criteria Pollutant Inventory.

A. General Reporting Requirements.

(1) Inventory Required Annually. The owner or operator of the following stationary sources of air pollution shall submit an annual emissions inventory report:

(a) any Part 70 source located in a nonattainment or maintenance area;

(b) any Part 70 source located in an attainment area, except a temporary source, with 25 tons per year or more of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide;

(c) any temporary Part 70 source located in an attainment area;

(d) stationary sources located in Davis, Salt Lake, Utah and Weber counties with emissions of PM10, sulfur oxides or nitrogen oxides of 25 tons per year or more;

(e) stationary sources in Salt Lake and Davis Counties with emissions of volatile organic compounds of 10 tons per year or more;

(f) stationary sources in Salt Lake, Davis and Utah Counties with carbon monoxide emissions of 100 tons per year or more.

(2) Inventory Required Every Fifth Year. The owner or

operator of a Part 70 source with less than 25 tons per year of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide shall submit an emissions inventory every fifth year, or more frequently on request from the executive secretary. The first inventory shall be due in 1997.

(3) Federal Requirement. The owner or operator of a stationary source of air pollution that meets the following criteria is required to submit on an annual basis the information necessary for the State to meet the reporting requirements 40 CFR 51.321 to 51.322:

(a) any source that actually emits 100 tons per year or more of PM_{10}, sulfur oxides, VOC, carbon monoxide or nitrogen oxides; or

(b) any source that actually emits 5 tons per year or more of lead.

(4) Due Date. Emission inventories shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to R307-1-3.5.

(5) Reports. Emission inventory reports shall include the rate and period of emission, excess or breakdown emissions, specific plant source of air pollution, composition of air contaminant, type and efficiency of air pollution control equipment and other information necessary to quantify operation and pollution emission, and to evaluate pollution control.

3.5.2 Hazardous Air Pollutant Inventory. The owner or operator of a stationary source, either "major source" or "area source" as defined in the Federal Clean Air Act (Title I, Part A, Section 112), which emits one or more hazardous air pollutant shall submit, at the request of the Executive Secretary, but not more than once per year, a Hazardous Air Pollutant Inventory. The inventory shall be submitted no later than July 1 each year, shall be limited to hazardous air pollutants and shall include a report of the rate and period of emission, excess or breakdown emissions, the specific plant source of the emissions, the composition of the emission, the type and efficiency of air pollution control equipment, and any other information determined necessary by the Executive Secretary for the issuance of permits, the verification of compliance, and the determination of the effectiveness of control technology relative to the source's maximum achievable control technology (MACT).

3.5.3. Emission Statement Inventory.

A. Applicability. The owner or operator of a stationary source of either VOC or NOx that is located in Salt Lake or Davis Counties or a nonattainment area for ozone and which emits or has the potential to emit at least 25 tons per year of either VOC or NOx is required to submit annually an emission statement for the emissions released directly or indirectly into the outdoor atmosphere during the previous calendar year. Such emission statement shall include information concerning both VOC and NOx even if the source's emissions or its potential to emit equalled or exceeded 25 tons per year for only VOC or NOx. Compliance with the emission statement requirements does not relieve any owner or operator of a source from the responsibility to comply with any other applicable reporting requirements set forth in any federal or state law or in the conditions of approval of any order or certificate in effect.

B. Procedure for submitting an emission statement. Emission statements shall be submitted in accordance with the following provisions:

(1) Emission statements shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to this rule.

(2) Emission statements shall be submitted to the Division of Air Quality on a form obtainable from the Division of Air Quality.

C. Required contents of an emission statement. Any person who submits an emission statement shall include, as an integral part of the report:

(1) Certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents, that the information provided is true, accurate and complete. Such certification should be submitted with the understanding that submittal of false, inaccurate or incomplete information is subject to civil and criminal penalties.

(2) The date of the signature of certification and the telephone number of the certifying individual shall be included.

(3) The following source identification information shall be included:

(a) full name of the source;

(b) parent company name, if applicable;

(c) physical location of the source (i.e., the street address);

(d) mailing address of the source;

(e) SIC code(s) of the source;

(f) UTM coordinates or latitude and longitude of the source; and

(g) the calendar year of the emissions.

(4) The following operating data for each source operation which has the potential to emit VOC or NOx shall be included:

(a) annual and peak ozone season throughput;

(b) average days of operation per week;

(c) average hours of operation per day; and

(d) total hours of operation for the year.

(5) The following information at the process level for NOx (expressed as molecular weight of NO_2) and VOC shall be included:

(a) Emissions information, including:

(i) the actual emissions of VOC and NOx in tons per year;

(ii) the average actual emissions of VOC and NOx in pounds per day of operation during the peak ozone season;

(iii) the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and

(iv) any emission factor used to determine actual emissions.

(b) Control apparatus information, including current primary and secondary control apparatus identification codes (from Table 2 included with the filing form in R307-1-3.5.3.B(2)); and the actual control efficiency achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used.

(c) Process rate data, including the annual process rate and the average process rate per day of operation during the peak ozone season.

(6) In place of the information required in R307-1-3.5.3.C(4) and R307-1-3.5.3.C(5), any source which has the

potential to emit less than one ton per year of either VOC or nitrogen oxides but which is subject to this rule shall include:

(a) a description of each source operation and actual emissions of each air contaminant emitted from each source operation shall be estimated at one ton per year, or

(b) a description of each source operation; estimated actual emission in tons per year; the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and any emission factor used to determine actual emissions.

(7) Emission statements shall include cumulative total fugitive emissions for the stationary source for all fugitive emissions that cannot be reported in the information pursuant to R307-1-3.5.3.C(4) through R307-1-3.5.3.C(6) above. Such fugitive emissions shall be expressed in tons per year and in average pounds per day of operation during the peak ozone season.

(8) The method used for quantifying actual emissions for a source operation for use in preparing emission information required in R307-1-3.5.3.C(5)(a) or R307-1-3.5.3.C(6)(b) above shall be the method which is reasonably available and which best estimates the actual emissions from the source operation, unless an operating permit pursuant to Title V of the federal Clean Air Act has been issued for the stationary source. In such case, the method used shall be the method specified in the operating permit.

D. Recordkeeping requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain for a period of two years from the due date of each emission statement a copy of the emission statement submitted to the Division of Air Quality and records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(2) Upon the request of the Executive Secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

3.6 Prevention of Significant Deterioration of Air Quality (PSD).

3.6.1 Area Designations. All areas of the State shall be designated as Class I, II, or III.

A. Pursuant to section 162(a) of the federal Clean Air Act the following areas are designated as mandatory Class I:

(1) Arches National Park
(2) Bryce Canyon National Park
(3) Canyonlands National Park
(4) Capitol Reef National Park
(5) Zion National Park

B. Pursuant to section 162(b) of the federal Clean Air Act, all other areas of the State are designated as Class II unless redesignated as provided in R307-1-3.6.2 or are designated as nonattainment areas.

3.6.2 Area Redesignation.

A. Within the restrictions and requirements of this paragraph, the Board may submit to the Governor for decision a recommendation to redesignate areas from any class to any other class.

B. In accordance with Section 162(a) of the federal Clean Air Act, areas designated as Class I under R307-1-3.6.1.A may not be redesignated.

C. In accordance with Section 164(a) of the federal Clean Air Act, the following areas may be redesignated only as Class I or II.

(1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

D. Except as provided in R307-1-3.6.2.B, C, and F, the Board may submit to the Governor for decision a recommendation to redesignate areas of the State as Class III if:

(1) There has been compliance with the requirements of R307-1-3.6.2.E;

(2) Such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(3) Any permit application for any major source or major modification which could receive an approval order only if the area in question were redesignated as Class III, and any material submitted as part of that notice of intent were available, insofar as practicable, prior to any public hearing or redesignation.

In accordance with Section 164 of the federal Clean Air Act, redesignations to Class III may be approved by the Governor only after consultation with appropriate committees of the legislature and if units of local government representing a majority of the residents of the proposed area to be redesignated enact ordinances concurring in the redesignation.

E. Prior to submittal to the Governor of a recommendation to redesignate any area:

(1) Notice shall be published in each daily newspaper in the affected area and written notice shall be made to local government units, other states, Indian governing bodies, Federal Land Managers whose lands may be affected by the proposed redesignation and public hearings shall be conducted in the affected areas. Such notice shall be made at least 30 days prior to the public hearing and include a statement of the availability of the discussion outlined in R307-1-3.6.2.E(2). Prior to the issuance of a notice under this paragraph respecting the redesignation of any Federal lands, a written notice shall be given to the appropriate Federal Land Manager who shall be afforded opportunity (not to exceed 60 days) to confer with the Board respecting the redesignation and to submit written comments and recommendations. In recommending redesignation of any area with respect to which a Federal Land Manager has submitted comments the Board shall publish a list of any inconsistency between such redesignation and such comments and recommendations together with the reasons for recommending such redesignation against the recommendation of the Federal Land Manager; and

(2) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation, will be prepared and made

available for public inspection at least 30 days prior to the hearing. Any person who petitions the Board for redesignation of an area may be required to prepare and submit to the Board the analysis required by R307-1-3.6.2.E(2).

F. Lands within the exterior boundaries of reservations of federally recognized Indian Tribes may be redesignated only by the appropriate Indian body as provided in Section 164 of the Clean Air Act.

3.6.3 Increments and Ceilings.

A. In Class I, II, or III areas, the maximum allowable increases in concentrations of sulfur dioxide, nitrogen dioxide and particulate matter over baseline concentrations of such pollutants are limited to the following:

TABLE 3

(1)Maximum Allowable Increase (ug/m^3)

Pollutant	Class I	Class II	Class III
PM10:			
Annual Arithmetic Mean	4	17	34
24-hr. Maximum	8	30	60
Sulfur Dioxide:			
Annual Arithmetic Mean	2	20	40
24-hr. Maximum	5	91	182
3-hr. Maximum	25	512	700
Nitrogen Dioxide:			
Annual Arithmetic Mean	2.5	25	50

(1) At any one location, the maximum allowable increase for other than the annual period may be exceeded once each year. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

B. Variances to Class I areas will be allowed only after compliance with the requirements of and within the increments provided in Section 165 of the federal Clean Air Act, or in the case of PM10 increments, only after compliance with the Title 40 of the Code of Federal Regulations, Section 51.166(p)(4) (as amended-see the June 3, 1993 Federal Register notice, 58 FR 31637) which is hereby incorporated by reference.

C. In any area, no resultant concentration of any air pollutant shall exceed the concentration permitted under either the national secondary or primary ambient air quality standard whichever concentration is lowest for the pollutant for a period of exposure.

D. Exclusions from increment consumption. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(1) Concentrations attributable to the increase in emissions from sources which have converted from:

(a) the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974; or

(b) using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such sources before the effective date of such an order or plan.

No exclusion of such concentrations shall apply more than five years after the effective date of the order or the plan. If both an order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(2) Concentrations of PM10 attributable to the increase in emissions from construction or other temporary emission-related activities.

(3) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides or PM10 from sources which are affected by plan revisions approved by EPA as meeting the criteria specified in 40 CFR 51.166(f)(4).

3.6.4 Baseline Concentration and Date.

A. Baseline concentration. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date except as provided in R307-1-3.6.4.B;

(2) The allowable emissions of major sources which commence construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

B. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) actual emissions from any major source on which construction commenced after the major source baseline date, and

(2) actual emissions increases and decreases at any source occurring after the minor source baseline date.

C. Baseline date. The minor source baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the federal Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21, or R307-1-3.6; and

(2) in the case of a major source the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. With respect to particulate matter, significant shall mean significant for PM10.

D(1) Any minor source baseline date established originally for increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary may rescind any such minor source baseline date where it can be shown to the executive secretary's satisfaction that the emissions increase from the major stationary source or the net emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM10 emissions.

(2) Any baseline area established originally for the increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that such baseline area shall not remain in effect if the executive secretary rescinds the corresponding minor source baseline date in accordance with R307-1-3.6.4.D(1).

3.6.5 PSD Areas - New Sources and Modifications.

A. Emission Limitations. Any source constructed or modified in a PSD area must meet all applicable emissions requirements of R307-1 and the Utah State Implementation Plan. A proposed source or modification which is not a major

source or major modification may be approved without meeting the requirements in R307-1-3.6.5.B, provided such source meets all other applicable requirements of these regulations. The emission limitations shall be stated as conditions of the approval order.

B. Major Source and Major Modification Review. Every new major source or major modification must be reviewed by the Executive Secretary to determine the air quality impact of the source to include a determination whether the source will cause or contribute to a violation of the maximum allowable increases or the NAAQS in any area. The determination of air quality impact will be made as of the source's projected start-up date. Such determination shall take into account all allowable emissions of approved sources or modifications whether constructed or not, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.

(1) In addition to meeting all other requirements of these regulations, any major source or major modification which would be constructed in a PSD area, shall:

(a) Provide the following additional information with the notice of intent required pursuant to R307-1-3.1:

(i) An analysis of the air quality impact of the source or modification and a demonstration that allowable emissions increases from the source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will not cause or contribute to a violation of any maximum allowable increase over the baseline concentration in any area or any NAAQS in any area.

(ii) An analysis of ambient air quality in the affected area for each pollutant that a new source would have the potential to emit in a significant amount, and for each pollutant for which a modification would result in a significant net emissions increase. With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Executive Secretary determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect. With respect to any such pollutant (other than non-methane hydrocarbons) for which such a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase in any area that the emissions of that pollutant would affect. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the notice of intent, except that, if the Executive Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period. Any data used in the analysis must be gathered using EPA reference methods or equivalent and quality assurance procedures equivalent to 40 CFR Part 58, Appendix B. A monitoring plan will be submitted to the Executive Secretary for approval prior to data collection. The Executive Secretary may grant exceptions or modifications to these monitoring requirements when not inconsistent with federal law.

(iii) Upon request of the Executive Secretary, the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and the air quality impact of any or all general commercial residential, industrial, and other growth which has occurred since the minor source baseline date in the area the source or modification would affect.

(iv) An analysis of the air quality related impact of the source or modification including an analysis of the impairment to visibility, soils, and vegetation and the projected air quality impact from general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) After construction of the source or modification, conduct such ambient air quality monitoring as the Executive Secretary determines may be necessary to establish the effect which the emissions from the source or modification may have on the air quality in any area.

(2) If the Executive Secretary finds that the emissions from a proposed major source or major modification would cause a violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification is required to meet a more stringent emission limitation sufficient to avoid a violation of the maximum allowable increase and/or

(b) the new source or modification has acquired sufficient offset to avoid a violation of the maximum allowable increase, and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the Executive Secretary finds that the emissions from a proposed major source or major modification would contribute to a known violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification has acquired sufficient emission offset so as to provide a positive net air quality benefit in the affected area, and

(b) any new emission limitations for affected existing sources are enforceable.

C. The requirements of R307-1-3.6.5.B(1) shall not apply to a major source or major modification if:

(1) The source is a portable stationary source which has previously received a permit under this paragraph, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated;

(2) The source or modification would be a non-profit health or non-profit educational institution and the Board approves a request that it be exempt from those requirements.

(3) The source or modification would be a major source or major modification only if fugitive emission and fugitive dust, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum or reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units
per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

(4) With respect to a particular pollutant, the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(a) would impact no Class I area and no area where an applicable increment is known to be violated, and

(b) would be temporary.

D. The requirements of R307-1-3.6.5.B(1) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a source that was in existence on March 1, 1978, if the net increase in allowable emissions for each pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E.(1) The requirements of R307-1-3.6.5.B(1)(a)(i) pertaining to the impact analysis shall not apply to a source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted a notice of intent before October 15, 1990, and the Executive Secretary subsequently determined that the notice of intent as submitted before that date was complete.

(2) The requirements of R307-1-3.6.5.B(1)(a)(i) concerning an analysis of the maximum allowable increase over the baseline concentration shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM10 if the owner or operator of the source or modification submitted an application for a permit before December 15, 1994, and the executive secretary subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements shall be with respect to the maximum allowable increases for total suspended particulates as in effect on the date the application was submitted. These increments were, for the annual geometric mean: 5, 19, and 37 micrograms/cubic meter for Class I, II and III areas respectively and, for the 24-hour maximum: 10, 37 and 75 micrograms/cubic meter for Class I, II and III areas respectively.

F. Exemption - Monitoring Requirement

(1) The Executive Secretary may grant exceptions or modifications to the monitoring requirements in R307-1-3.6.5.B(1)(a)(ii) which are not inconsistent with federal law.

(2) The Executive Secretary may exempt a stationary source or modification from the requirements of R307-1-3.6.5.B(1)(a)(ii) with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m^3, 8-hour average;
Nitrogen dioxide - 14 ug/m^3, annual average;
PM10 - 10 micrograms/cubic meter, 24-hour average;
Sulfur dioxide - 13 ug/m^3, 24-hour average;
Lead - 0.1 ug/m^3, 24-hour average;
Mercury - 0.25 ug/m^3, 24-hour average;
Beryllium - 0.0005 ug/m^3, 24-hour average;
Ozone - No de minimis air quality level is provided for ozone. However, any proposed source or modification subject to PSD with net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data;
Fluorides - 0.25 ug/m^3, 24-hour average;
Vinyl chlorides - 15 ug/m^3, 24-hour average;
Total reduced sulfur - 10 ug/m^3, 1-hour average;
Hydrogen sulfide - 0.04 ug/m^3, 1-hour average;
Reduced sulfur compounds - 10 ug/m^3, 1-hour average; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in R307-1-3.6.5.F(2)(a), or the pollutant is not listed in R307-1-3.6.5.F(2)(a).

3.6.6 Increment Violations.

Where the Board determines that an increment under R307-1-3.6.3 is violated, the Board shall promulgate a plan and implement regulations to eliminate the violation.

3.6.7 Banking of Emission Offset Credit in PSD Areas. Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the Executive Secretary must identify them in either the Utah SIP or an order and shall provide a registry to identify the person, private entity, or government authority that has the right to use

or allocate the banked emission reduction and to record any transfer of or lien on these rights.

3.7 Air Quality Modeling.

3.7.1 Use of Dispersion models. All estimates of ambient concentrations derived in meeting the requirements of these rules shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models). Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the Executive Secretary may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

3.7.2 Modeling of Criteria Pollutant Impacts in Attainment Areas. Prior to receiving an approval order, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 4, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 4, shall conduct air quality modeling, as identified in R307-1-3.7.1, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard or a Prevention of Significant Deterioration increment, as determined by the Executive Secretary.

TABLE 4

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	As required under R307-1-3.6.5.B
lead	0.6 tons per year

3.7.3 Documentation of Ambient Air Impacts for Hazardous Air Pollutants. Prior to receiving an approval order under R307-1-3.1, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under R307-1-3.7.3.C. for all installations not exempt under R307-1-3.7.3.A.

A. Exempted Installations.

(1) The requirements of R303-1-3.7.3. do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in R307-1-3.7.3.A(2). This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-1-3.1.

(2) The executive secretary may, upon making a written determination that the delay in the implementation of an emission standard under 40 CFR Part 63 might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with R307-1-3.7.3.C.

(a) The executive secretary shall notify the source in writing of the preliminary decision to require some or all of the documentation as listed in R307-1-3.7.3.C.

(b) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the executive secretary approves.

(c) In making a final determination, the executive secretary shall document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

B. Lead Compounds Exemption. The requirements of R307-1-3.7.3. do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-1-3.7.2.

C. Submittal Requirements.

(1) Each applicant's notice of intent shall include:

(a) the estimated maximum pounds per hour emission rate increase from each affected installation,

(b) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e) for each installation for which the source proposes an emissions increase,

(c) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 5, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 5 EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(2) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in R307-1-

3.7.3.D.

(3) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The executive secretary may require such documentation to include, but not be limited to:

(a) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(b) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(c) a description of the human population or other biological species which could be exposed to the estimated concentration,

(d) an evaluation of land use for the impacted areas,

(e) the environmental fate and persistency.

D. Toxic Screening Levels and Averaging Periods.

(1) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(a) one hour for emissions releases having a duration period of one hour or greater,

(b) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(c) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(2) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV-TWA, and the applicable averaging period shall be 24 hours.

(3) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with R307-1-3.7.3.D(1) and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with R307-1-3.7.3.D(2).

3.8 Stack Heights and Dispersion Techniques. The degree of emission limitation required of any source for control of any air contaminant to include determinations made under 3.1, 3.3, and 3.6 must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in paragraph 3.8.1 of these regulations. This paragraph does not restrict, in any manner, the actual stack height of any source.

1. The provisions in this subsection 3.8 shall not apply to:

A. stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

B. coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

2. The Executive Secretary may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by this subsection 3.8.

3.9 Fees - Major Sources. The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to subsection 3.1 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

A. The Executive Secretary will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

B. The Executive Secretary shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

C. A request for review or reconsideration of the bill provided by the Executive Secretary to the owner or operator of a source affected by this subsection 3.9 may be filed by the owner or operator of said source with the Executive Secretary within 20 days of receipt. The Board shall consider the request for review and determine the appropriateness of the bill.

3.10 Visibility

1. The Executive Secretary shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under subsection 3.1 of these regulations, the Executive Secretary shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The Executive Secretary shall take into consideration as a part of the review and control requirements:

A. the costs of compliance;

B. the time necessary for compliance;

C. the energy usage and conservation;

D. the non air quality environmental impacts of compliance;

E. the useful life of the source; and

F. the degree of visibility improvement which will be provided as a result of control.

In determining visibility impact by a major new source or major modification, the Executive Secretary shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

The Executive Secretary shall insure that source emissions

will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

2. The Executive Secretary shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-1-3.1 of these regulations, on the proposal. The Executive Secretary shall consider, as a part of the new or modified source review required by R307-1-3.10, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the Executive Secretary within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the Executive Secretary determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the Executive Secretary shall not issue the approval order. Where the Executive Secretary determines that such analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the Executive Secretary will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

Where the Executive Secretary receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the Executive Secretary will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

3. If the analysis required by R307-1-3.10.1 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the Executive Secretary may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the Executive Secretary.

4. The Executive Secretary will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

5. The Executive Secretary may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

R307-1-4. Emissions Standards.

Section R307-1-3 may require more stringent controls than listed herein, in which case the requirements of R307-1-3 must be met.

4.1 Visible Emissions. Opacity limitations in R307-1-4.1 shall not apply to any sources for which emission limitations are assigned pursuant to R307-1-3.2. The provisions of R307-1-4.1.7 through R307-1-4.1.9 shall apply to such sources except as otherwise provided in R307-1-3.2.

4.1.1 In PM10 Nonattainment Areas, visible emissions from existing installations except gasoline powered internal combustion engines, shall be of a shade or density no darker than 20% opacity. Installations in other areas of the State which were constructed before April 25, 1971, except internal combustion engines, shall be of a shade or density no darker than 40% opacity except as provided in these regulations.

4.1.2 Visible emissions from installations constructed after April 25, 1971, except internal combustion engines, or any incinerator shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these regulations.

4.1.3 No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit the emissions of visible contaminants except for starting motion no farther than 100 yards, or for stationary operation not exceeding 3 minutes in any hour.

4.1.4 Emissions from diesel engines manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.5 Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.6 Upon application, exceptions to paragraphs 4.1.4 and 4.1.5 may be granted by the Board on a case by case basis for diesel locomotives operating above 6000 feet MSL.

4.1.7 Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-1-4.7), shall not be deemed in violation provided that the executive secretary finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

4.1.8 Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of contaminants discharged per unit of time rather than by dilution of emissions with clean air.

4.1.9 Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9, "Visual Determination of

Opacity of Emissions from Stationary Sources", 40 CFR Part 60, Appendix A. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a 6-minute period shall not apply.

4.2 Sulfur Content of Fuels.

4.2.1 Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

A. In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: 1) Weight Percent Sulfur 2) Gross Heating Value (btu per unit volume) and 3) Density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

B. In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

C. All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with paragraphs A and B above.

D. Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the executive secretary upon request, and shall include a period of two years ending with the date of the request.

E. If the owner/operator of the source can demonstrate to the executive secretary that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

F. Any person may apply to the executive secretary for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-1-4.2, or that the alternative test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

4.2.2 Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of R307-1-4.2.1. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of R307-1-4.2.1. Control apparatus to continuously prevent the emission of sulfur greater than provided by R307-1-4.2.1 must be specified in the application for an exemption.

4.2.3 In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the executive secretary. The operator shall provide the executive secretary with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with R307-1-4.2.1. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from R307-1-4.2.1 are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

4.2.4 Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

A. For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

B. For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

C. For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

4.4 Automobile Emission Control Devices. Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

4.5 Provisions for fugitive emissions and fugitive dust have been renumbered to R307-12.

4.6 Provisions for continuous emission monitoring systems have been renumbered to R307-13.

4.7 Unavoidable Breakdown. This applies to all regulated pollutants including those for which there are National Ambient Air Quality Standards. Except as otherwise provided in R307-1-4.7, emissions resulting from an unavoidable breakdown will not be deemed a violation of these regulations. If excess emissions are predictable, they must be authorized under the variance procedure in R307-1-2.3. Breakdowns that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered unavoidable breakdown.

4.7.1 Reporting. A breakdown for any period longer than 2 hours must be reported to the executive secretary within 3 hours of the beginning of the breakdown if reasonable, but in no case longer than 18 hours after the beginning of the breakdown. During times other than normal office hours, breakdowns for any period longer than 2 hours shall be initially reported to the Environmental Health Emergency Response Coordinator, Telephone (801) 536-4123. Within 7 calendar days of the beginning of any breakdown of longer than 2 hours, a written report shall be submitted to the executive secretary which shall

include the cause and nature of the event, estimated quantity of pollutant (total and excess), time of emissions and steps taken to control the emissions and to prevent recurrence. The submittal of such information shall be used by the executive secretary in determining whether a violation has occurred and/or the need of further enforcement action.

4.7.2 Penalties. Failure to comply with the reporting procedures of R307-1-4.7.1. will constitute a violation of these regulations.

4.7.3 The owner or operator of an installation suffering an unavoidable breakdown shall assure that emission limitations and visible emission limitations are exceeded for only as short a period of time as reasonable. The owner or operator shall take all reasonable measures which may include but are not limited to the immediate curtailment of production, operations, or activities at all installations of the source if necessary to limit the total aggregate emissions from the source to no greater than the aggregate allowable emissions averaged over the periods provided in the source's approval orders or the UACR. In the event that production, operations or activities cannot be curtailed so as to so limit the total aggregate emissions without jeopardizing equipment or safety or measures taken would result in even greater excess emissions, the owner or operator of the source shall use the most rapid, reasonable procedure to reduce emissions. The owner or operator of any installation subject to a SIP emission limitation pursuant to these rules shall be deemed to have complied with the provisions of R307-1-4.7 if the emission limitation has not been exceeded.

4.7.4 Failure to comply with curtailment actions required by R307-1-4.7.3 will constitute a violation of these rules.

4.8 In accordance with paragraph 110(a)(6), Clean Air Act as amended August 1977, owners or operators may not temporarily reduce the pay of any employee by reason of the use of a supplemental or intermittent or other dispersion dependent control system for the purposes of meeting any air pollution requirement adopted pursuant to the Clean Air Act as amended August 1977.

4.9 Requirements for ozone nonattainment areas and Davis and Salt Lake Counties have been renumbered to R307-14.

4.10 Abrasive Blasting.

4.10.1 Visible Emission Standards.

A. No person shall, if he complies with performance standards outlined in R307-1-4.10.3 or if he is not located in an area of nonattainment for particulates, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is a shade or density darker than 40% opacity.

B. No person shall, if he is not complying with an applicable performance standard in R307-1-4.10.3 and is in an area of nonattainment, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is of a shade or density no darker than 20% opacity.

4.10.2 Visible Emission Evaluation Techniques. Visible emission evaluation of abrasive blasting operations shall be conducted in accordance with the following provisions:

A. Emissions from unconfined blasting shall be read at the densest point of the emission after a major portion of the spent abrasive has fallen out, at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

B. Emissions from unconfined blasting employing multiple nozzles shall be judged as a single source unless it can be demonstrated by the owner or operator that each nozzle, evaluated separately, meets the emission and performance standards provided for in R307-1-4.10.

C. Emissions from confined blasting shall be read at the densest point after the air contaminant leaves the enclosure.

4.10.3 Performance Standards.

A. To satisfy the requirements of R307-1-4.10.1, any abrasive blasting operation may use at least one of the following performance standards:

(1) Confined blasting;

(2) Wet abrasive blasting;

(3) Hydroblasting; or

(4) Unconfined blasting using abrasives as defined in R307-1-4.10.3.B.

B. Abrasives. Abrasives used for dry unconfined blasting referenced in R307-1-4.10.3.A shall comply with the following performance standards:

(1) Before blasting the abrasive shall not contain more than 1% by weight material passing a #70 U.S. Standard sieve.

(2) After blasting the abrasive shall not contain more than 1.8% by weight material 5 micron or smaller.

Abrasives reused for dry unconfined blasting are exempt from R307-1-4.10.3.B(2), but must conform with R307-1-4.10.3.B(1).

C. Abrasive Certification. Sources using the performance standard of R307-1-4.10.3.A(4) to meet the requirements of R307-1-4.10.1 must demonstrate they have obtained abrasives from persons which have certified (submitted test results) to the executive secretary at least annually that such abrasives meet the requirements of R307-1-4.10.3.B.

4.12 Emission standards for residential solid fuel burning devices and fireplaces have been renumbered to R307-17.

R307-1-5. Emergency Controls.

5.1 Air Pollution Emergency Episodes.

5.1.1 Determination of an episode and its extent or stage shall be made by the Executive Secretary taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE

AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE 24-hour average	800 (0.3 ppm)	1,600 (0.6 ppm)	2,100 (0.8 ppm)	2,620 (1.0 ppm)
PM10 24-hour average	350	420	500	600
CARBON MONOXIDE				
8-hour average	17,000 (15 ppm)	34,000 (30 ppm)	46,000 (40 ppm)	57,500 (50 ppm)
4-hour average				86,300 (75 ppm)

1-hour average				144,000 (125 ppm)
OZONE				
1-hour average	400 (0.2 ppm)	800 (0.4 ppm)	1,000 (0.5 ppm)	
2-hour average				1,200 (0.6 ppm)
NITROGEN DIOXIDE 1-hour average	1130 (0.6 ppm)	2,260 (1.2 ppm)	3,000 (1.6 ppm)	3,750 (2.0 ppm)
NITROGEN DIOXIDE 24-hour average	282 (0.15 ppm)	565 (0.3 ppm)	750 (0.4 ppm)	938 (0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

5.1.2 The Executive Secretary shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

5.1.3 If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

A. Make public announcements pertaining to the existence, extent and area of the episode.

B. Require corrective measures as necessary to prevent a further deterioration of air quality.

5.1.4 Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

R307-1-6. Eligibility of Pollution Control Expenditures for Sales Tax Exemption and Income Tax Credit.

6.1 Eligibility of Pollution Control Expenditures for Sales Tax Exemption.

6.1.1 Application for certification shall be made on forms provided by the State Department of Environmental Quality, and shall include all information requested thereon and such additional reasonably necessary information as is requested by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board.

6.1.2 Certification shall be made only for taxpayers who are owners, operators (under a lease) or contract purchasers of a trade or business that utilizes Utah property with a pollution control facility to prevent or minimize pollution.

6.1.3 Date of filing shall be date of receipt of the final item of information requested and this filing date shall initiate the 120-day review period.

6.1.4 All materials, equipment and structures (or part thereof) purchased, leased or otherwise procured and services utilized for construction or installation in a water or air pollution control facility shall be eligible for certification, provided:

A. such materials, equipment, structures (or part thereof), and services installed, constructed, or acquired result in a demonstrated reduction of pollutant discharges or emission pollutant levels, and

B. the primary purpose of such materials, equipment, structures (or part thereof), and services is preventing, controlling, reducing, or disposing of water or air pollution.

The above includes expenditures which reduce the amount of pollutants produced as well as expenditures which result in removal of pollutants from waste streams. The materials, equipment, structures (or part thereof), and services that are necessary for the proper functioning of air or water pollution control facilities meeting the requirements of Subsections R307-1-6.1.4.A and R307-1-6.1.4.B, including equipment required for compliance monitoring, shall be eligible for certification.

6.1.5 Applications for certification shall be certified by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board after consultation with the State Tax Commission and only if:

A. Air Quality

(1) the air pollution control facility in question has been reviewed and approved by the executive secretary of the Air Quality Board for those air pollution sources needing review in accordance with Section R307-1-3.1 of these rules, or

(2) the air pollution control facilities installed, constructed, or acquired are the result of the requirements of these rules (permits by rule) or the State Implementation Plan.

B. Water Quality

(1) plans for the water pollution control facility in question require review and approval by the Water Quality Board and have been so approved, or

(2) the water pollution control facility is specifically required by the Water Quality Board, including facilities constructed for pretreatment of wastes prior to discharge to a public sewerage system in accordance with Subsection R317-8-8.1, but excluding facilities which are permitted by rule under Subsection R317-6-6.2 (Ground Water Discharge Permit by Rule) unless required to obtain an individual permit by the Water Quality Board, or

(3) the water pollution control facility is required and permitted by another statutory board within the Department of Environmental Quality, or

(4) the water pollution control facility eliminates or reduces the discharge of pollutants which would be regulated by the Water Quality Board, if such pollutants were discharged.

6.1.6 The following items are specifically not eligible for certification:

A. materials and supplies used in the normal operation or maintenance of the water or air pollution control facilities;

B. materials, equipment, and services used to monitor ambient air or water, unless required for a permit or approval

from a statutory board within the Department of Environmental Quality;

C. materials, equipment, and services for collection, treatment, and disposal of human wastes, unless the primary purpose of such materials, equipment and services is the treatment of industrial wastes;

D. materials, equipment and services used in removal, treatment, or disposal of pollutants from contaminated ground water, if the applicant caused the ground water contamination by failing to comply with applicable permits, approvals, rules, or standards existing at the time the contamination occurred; and

E. air conditioners.

6.1.7 Upon determination that facilities described in any application under Subsection R307-1-6.1.1 satisfy the requirements of these rules and Sections 19-2-123 through 19-2-127 the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board shall issue a certification of pollution control facility to the applicant.

6.1.8 If the application is rejected, the applicant may appeal to the appropriate Board within 20 days for an informal hearing. The Board's decision will be final and conclusive on all parties unless appealed.

6.1.9 Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-2-126, after consultation with the State Tax Commission.

6.2 Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment to Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.

6.2.1 Definitions. The following definitions apply only to R307-1-6.2.

A. "Clean Fuel" means:

(1) propane, natural gas, or electricity;

(2) other fuel the Air Quality Board determines annually on or before July 1, to be at least as effective as fuels under R307-1-6.2.1.A(1) in reducing air pollution; or

(3) fuel that meets the clean fuel vehicle standards specified in Part C of Title II of the federal Clean Air Act.

B. "Certified by the Board" is defined in Utah Code 59-7-605(1)(b) and 59-10-127(1)(b).

C. "Special Fuel Mobile Equipment" is defined in Utah Code 59-7-605(1)(d) and 59-10-127(1)(d).

D. "Conversion System" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added during the process of modifying a motor vehicle or a special fuel mobile equipment to operate on a clean fuel.

6.2.2 As specified in Sections 59-7-, and 59-10-127 for tax years beginning January 1, 1997, and ending December 31, 2001, there is a credit against tax otherwise due in an amount equal to:

A. 20%, up to a maximum of $500 per vehicle, of the cost of new motor vehicles being registered in Utah and for the first time that are fueled by a clean fuel;

B. 20%, up to a maximum of $400, of the cost of equipment for conversion, if certified by the Board, of a motor vehicle registered in Utah to be fueled by a clean fuel; and

C. 20%, up to a maximum of $500, of the cost of equipment for conversion, if certified by the Board, of a special fuel mobile equipment engine to be fueled by a clean fuel or a fuel substantially more effective in reducing air pollution than the fuel for which the engine was originally designed.

6.2.3 No person may convert a motor vehicle to use a clean fuel in a manner that violates Section 203(a) of the Act or the "Interim Tampering Enforcement Policy" of the Environmental Protection Agency, June 15, 1974.

6.2.4 Proof of purchase of an item for which a credit specified in R307-1-6.2.2.A is allowed shall be made by submitting to the executive secretary:

A. a copy of the Manufacturer's Statement of Origin;

B. an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN); and

C.(1) a copy of the Manufacturer's Suggested Retail Price document that includes a clean fuel option on the equipment list for that vehicle or

(2) in the case of vehicles certified as meeting the Clean Fleet Vehicle standards specified in Part C of the federal Clean Air Act, the owner must make the vehicle available for verification by a representative of the executive secretary of an under-hood decal on the vehicle for which the credit is requested stating "This vehicle (or engine, as applicable) conforms to California regulations applicable to (model-year) new (TLVE, LEV, ULEV, or ZEV) (specify motorcycles, passenger cars, light-duty trucks, medium-duty diesel engines, as applicable)."

6.2.5.A. Proof of purchase of an item for which a credit specified in R307-1-6.2.2.B or C is allowed shall be made by submitting to the executive secretary a copy of the purchase order, customer invoice, or receipt.

B. The proof of purchase specified in Subsection R307-1-6.2.5.A must be completed and signed by the person that converted the vehicle or the special fuel mobile equipment, and must include the following information:

(1) owner's name;

(2) owner's social security number or taxpayer identification number;

(3) vehicle VIN or identification number of the special fuel mobile equipment;

(4) fuel type before conversion;

(5) fuel type after conversion;

(6) conversion system manufacturer;

(7) conversion system model number;

(8) date of the conversion;

(9) name, address, and phone number of the person that converted the vehicle or the special fuel mobile equipment;

(10) documentation of compliance with all existing applicable technician certification requirements, as specified in 53-7-301 through 316, R710-6, and R714-400-7.P, for the person that performed the installation of the conversion system, by providing the technician's current valid certification number;

(11) documentation that the conversion system installed has been certified by the Board, by providing the current valid certification number issued by the executive secretary in accordance with R307-6.2.6; and

(12) for vehicle conversions, copies of the vehicle inspection reports (VIR) before and after the conversion, indicating that the vehicle passed the current applicable

inspection and maintenance (I/M) emission test in the county where the vehicle is registered. The owner is exempt from the VIR submission requirements, only if a vehicle is registered and is converted in a county that does not implement any inspection and maintenance program. If the vehicle is registered in a non-I/M county and is converted in an I/M county, VIR submission is required.

6.2.6 Procedures for Obtaining Certification by the Board for Fuel Conversion Systems.

A. For vehicles.

(1) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel, vehicle class, and engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

(a) description of each conversion system, fuel used, vehicle certification class (including vehicle type and vehicle weight class), and engine type;

(b) Federal Test Procedure (FTP) mass emissions test data which:

(i) is collected in high altitude conditions as defined by the Environmental Protection Agency (EPA) using EPA approved equipment, test procedures and practices, and meeting EPA emissions certification standards, as defined in 40 CFR Part 86;

(ii) shows that tests conducted before and after installation of the conversion system demonstrate a reduction in total emissions and that there is no increase in emissions for each regulated pollutant compared to emission levels when operated on the original fuel prior to the conversion;

(iii) is tested on two vehicles for each vehicle certification class which have accumulated at least 4,000 miles each;

(c) system engineering specifications.

(2) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system, or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(3) Special provisions.

(a) After conversion, dual-fuel or flexible-fuel vehicles shall be required to undergo at least one Federal Test Procedure on conventional fuel and must demonstrate that the EPA emissions certification standards in 40 CFR Part 86 for that vehicle type and model year on the conventional fuel are being met.

(b) The executive secretary may waive the requirement for testing to be conducted at high altitude, specified in R307-1-6.2.6.A(1)(b)(i), if the manufacturer demonstrates that the conversion system provides an equivalent emission reduction.

(c) Acceptability of Canadian data will be determined on a case-by-case basis after demonstrating to the satisfaction of the executive secretary that the test is equivalent to the Federal Test Procedure.

(d) Vehicle conversions must comply with EPA Mobile Source Enforcement Memorandum No. 1A., dated June 25, 1974.

B. For special fuel mobile equipment.

(1) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel and mobile equipment engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

(a) description of each conversion system, fuel used, and mobile equipment engine type;

(b) emissions test data showing that the conversion system results in an emission reduction of total emissions and that there is no increase in emissions for each regulated pollutant in comparison with emission levels when operated on the original fuel prior to the conversion; and

(c) system engineering specifications.

(2) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(3) The executive secretary shall evaluate the certification of conversion system for special fuel mobile equipment on a case-by-case basis as new technologies are improved.

C. Certification by other states may be accepted by the executive secretary if it meets the requirements specified in R307-1-6.2.6.A and B.

D. The executive secretary will revoke the certification of a conversion system if an investigation finds that a certified conversion system exceeds the level of emissions for which it was certified, taking into account deterioration because of age or other reasonable concern.

6.2.7 The executive secretary will acknowledge receipt of proofs specified in R307-1-6.2 by signing the relevant written statement provided on forms prescribed by the State Tax Commission.

6.3 Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels.

6.3.1 Definitions. The following definitions apply only to Subsection R307-1-6.3.

A. Fireplaces and wood stoves using clean burning fuels are:

(1) continual-feed wood pellet stoves

(2) high-mass wood stoves

(3) natural gas or propane free-standing fireplaces or inserts, but not including fireplace log systems, or

(4) any wood burning stove, fireplace, or fireplace insert that is certified by the Environmental Protection Agency in accordance with test procedures prescribed in 40 CFR Section 60.534.

6.3.2 As specified in Subsection 59-7-110.8, and Section 59-10-128 for tax years beginning January 1, 1992, and ending December 31, 1997, there is a credit against tax otherwise due under this chapter in an amount equal to 10%, up to a maximum of $50, of the total of:

A. the purchase price or

B. both the purchase price and installation cost of each approved fireplace or wood stove.

6.3.3 Proof of purchase of an item for which a credit specified in Subsection R307-1-6.3.2 is allowed shall be made by submitting to the executive secretary, or representative appointed by the executive secretary:

A. a copy of the sales receipt clearly stating the make, model, and price paid for the equipment and installation, and

B. a completed copy of the "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form identifying the:

(1) owner's name and address;

(2) owner's social security number or taxpayer identification number;

(3) dealer's name and address;

(4) fireplace make and model;

(5) fireplace serial number;

(6) purchase price;

(7) installer's name and company name; and

(8) installation cost.

6.3.4 An authorized representative of the executive secretary will acknowledge receipt of proofs specified in Subsection R307-1-6.3.3 by signing the relevant written statement provided on the State Tax Commission "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form.

R307-1-8. Asbestos Certification, Asbestos Work Practices, and Implementation of Toxic Substances Control Act, Title II.

8.1 Definitions: The definitions in this subsection apply only to R307-1-8.

"Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulate. If visible emissions are observed coming from asbestos containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"Airlock" means a system for allowing access to an area with minimum air movement through the system. The airlock typically consists of two curtained doorways separated by a distance of at least 3 feet such that personnel pass through one doorway into the airlock, allowing the doorway sheeting to overlap and close off the opening before proceeding through the second doorway, thereby preventing flow-through of contaminated air.

"Amended water" means a mixture of water and a chemical surfactant or a wetting agent that provides equivalent control of asbestos fiber release.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

"Asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763 Section 1, Polarized Light Microscopy. If the asbestos content is less than 10% as determined by a method other than point counting using polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

"Asbestos contractor" means any person who contracts for hire to perform an asbestos project or an asbestos inspection.

"Asbestos Inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material. This term includes reinspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

1. periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

2. inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

3. visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos project" means any activity, involving the removal, encapsulation, enclosure, renovation, repair, demolition, salvage, disposal, or other disturbance of friable asbestos-containing material.

"Asbestos project operator" means any asbestos contractor, any person responsible for the persons performing an asbestos project in an area to which the general public has unrestrained access, or any LEA responsible for the persons performing an asbestos project in a school building subject to AHERA.

"Asbestos removal" means the stripping of asbestos-containing materials from surfaces or components of a structure and to take out structural components that contain or are covered with friable asbestos-containing material from a structure.

"Asbestos waste" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to R307-1-8. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos worker" means a person who,in a nonsupervisory capacity, performs an asbestos project.

"CFR" means Code of Federal Regulations.

"Certification" means an authorization issued by the executive secretary to persons who engage in asbestos projects or who act as asbestos workers, supervisors, inspectors, project designers, or management planners.

"Clean room" means an uncontaminated area or room which is part of the worker decontamination system and which has provisions for storage of workers' street clothes and clean protective equipment.

"Consultant" means a person who acts as an inspector, management planner, project designer, or any combination thereof.

"Delegated local agency" means a public agency having a memorandum of agreement with the Utah Department of Environmental Quality, Utah Air Quality Board, that assigns designated responsibilities for the administration of NESHAP Subpart M and/or R307-1-8 to the public agency.

"Demolition" means the wrecking or removal of any load-

supporting structural member of a structure together with any related handling operations or the intentional burning of any structure.

"Emergency renovation operation" means any asbestos project which was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failure of equipment.

"Encapsulation" means the application of an encapsulating agent to asbestos-containing materials to control the release of asbestos fibers into the air.

"Encapsulating agent" means a coating applied to the surface of friable asbestos-containing materials for the purpose of preventing the release of asbestos fibers. The encapsulating agent creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means an airtight, impermeable, permanent barrier around asbestos containing material to prevent the release of asbestos fibers into the air.

"Equipment room" means a contaminated area or room which is part of the asbestos worker decontamination system with provisions for storage of contaminated clothing and equipment.

"Friable asbestos-containing material" means any asbestos-containing material that hand pressure can crumble, pulverize, or reduce to powder when dry.

"HEPA filtration" means the high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than 0.3 micron in diameter with 99.97% efficiency, for use in asbestos-contaminated environments.

"Inspector" means a person who performs an asbestos inspection.

"LEA" means a local education agency as defined in AHERA.

"Management planner" means a person who prepares a management plan for a school building subject to AHERA.

"Minor fiber release episode" means any uncontrolled or unintentional disturbance of asbestos-containing material resulting in a visible emission which involves the falling or dislodging of three square or linear feet or less of friable asbestos-containing material.

"Model Accreditation Plan" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"NESHAP size asbestos project" means any asbestos project that involves at least:

(a) 260 linear feet (80 meters) of pipe covered with friable asbestos-containing material;

(b) 160 square feet (15 square meters) of friable asbestos-containing material used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structure, structural member, or structural component; or

(c) 35 cubic feet (one cubic meter) of friable asbestos-containing material removed from structural members or components where the length and area could not be measured previously.

"OSHA" means Occupational Safety and Health Administration.

"Planned asbestos project" means asbestos projects in which the amount of asbestos-containing material to be removed, stripped, or otherwise disturbed within a calendar year, January 1 through December 31, is the NESHAP size. This term includes nonscheduled renovation operations necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience.

"Project designer" means a person who designs an asbestos project other than:

1. a small-scale, short duration asbestos project; or
2. an asbestos project necessitated by a minor fiber release episode.

"Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units or detached single-family homes.

"Public agency" means any federal or state department, bureau, institution or agency thereof, any municipal corporation, county, city, or other political or taxing subdivision of the state.

"Renovation" means altering in any way one or more structural components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

"Response Action" means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable asbestos-containing material.

"Shower room" means a room between the clean room and equipment room in the worker decontamination system with hot and cold or warm running water controllable at the tap and suitably arranged for complete showering during worker decontamination.

"Single family residential dwelling" means any structure or portion of a structure whose primary use is for housing of one family. Residential portions of multi-unit dwellings such as apartment buildings, condominiums, duplexes and triplexes are also considered to be, for the purposes of R307-1-8, single family residential dwellings; common areas such as hallways, entryways, and boiler rooms are not single family residential dwellings.

"Site supervisor" means a person who meets the definition of a "competent person" as cited in 29 CFR 1926.1101 (OSHA) and has the authority to act as the agent of the asbestos project operator at the asbestos project work site.

"Small-scale, short-duration asbestos project" means an asbestos project such as, but not limited to:

(1) removal of asbestos-containing insulation on pipes;

(2) removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(3) replacement of an asbestos-containing gasket on a valve;

(4) installation or removal of a small section of drywall;

(5) installation of electrical conduits through or proximate to asbestos-containing materials. Small-scale, short-duration asbestos projects can further be defined by the following

considerations:

(6) removal and/or repair of small quantities of asbestos-containing materials only if required in the performance of another maintenance activity not intended as asbestos abatement;

(7) removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag;

(8) minor repairs to damaged thermal system insulation which do not require removal;

(9) repairs to a piece of asbestos-containing wallboard;

(10) repairs, involving removal, encapsulation or enclosure, to small amounts of friable asbestos-containing material only if required in the performance of emergency or routine renovation activity not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

"Strip" means to take off asbestos containing material from any part of a structure or structural component.

"Structural component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a structure or any structural member of the structure.

"Structural member" means any load-supporting member of a structure, such as beams and load-supporting walls or any non-load-supporting member, such as ceilings and non-load-supporting walls.

"Structure" means, for the purposes of R307-1-8: any institutional, commercial, residential, or industrial building, equipment, building component, installation, or other construction.

"Supervisor" means a person who carries out or oversees an asbestos project.

"TSCA accreditation" means successful completion of training as an inspector, management planner, project designer, contractor/supervisor, or worker, as specified in the Toxic Substances Control Act, Title II.

"TSCA Title II" means 15 U.S.C. 2641 through 2656, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, and 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools, including appendices.

"Waste generator" means any owner or operator of a source covered by R307-1-8 whose act or process produces asbestos waste.

"Waste shipment record" means the shipping document, that the waste generator originates and signs, and is used to track and substantiate the disposition of asbestos waste.

"Worker decontamination system" means an enclosed area, isolated from areas which are not contaminated with asbestos, consisting of a clean room, shower room, and equipment room, each separated from the other by airlocks and accessible through doorways protected with two overlapping polyethylene sheets.

"Working day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

8.2 Applicability.

8.2.1 Certification and Accreditation Requirements.

A. Asbestos project in a structure.

(1) The following persons shall be certified, as specified under Subsection R307-1-8.3, prior to conducting an asbestos project in a structure:

(a) asbestos contractors; and

(b) inspectors.

(2) The asbestos project operator shall ensure the following persons are trained or accredited, as specified in Subsection R307-1-8.4, prior to conducting an asbestos project:

(a) supervisors;

(b) asbestos workers; and

(c) persons who disturb any amount of friable asbestos-containing material in areas to which the general public has unrestrained access.

B. Asbestos activity subject to TSCA Title II. The following persons shall be certified, as specified in Subsection R307-1-8.3, prior to conducting an asbestos activity subject to TSCA Title II:

(1) asbestos contractors;

(2) supervisors;

(3) asbestos workers;

(4) inspectors;

(5) management planners; and

(6) project designers.

8.2.2 Work Practice Requirements.

The work practice requirements of Section R307-1-8 apply to any asbestos project operator who performs an asbestos project; persons who disturb any amount of friable asbestos-containing material in an area where the general public has unrestrained access; and to asbestos workers, supervisors, and consultants who perform work on an asbestos project.

8.2.3 The requirements of R307-10-1 (NESHAP 40 CFR Part 61 Subpart M, the National Emission Standard for Asbestos) apply to asbestos projects subject to R307-1-8.

8.3 Certification and Accreditation Requirements

8.3.1 Asbestos Contractor, Supervisor, and Consultant Certification Requirements.

A. Certificate required.

(1) The following persons shall obtain a certificate:

(a) Asbestos contractors, prior to engaging in an asbestos project in a structure;

(b) inspectors, prior to contracting for hire to perform an asbestos inspection, performing an asbestos inspection in an area to which the general public has unrestrained access, or performing an asbestos inspection in a building subject to TSCA Title II (public and commercial building);

(c) supervisors, asbestos workers, and project designers, prior to engaging in an asbestos project subject to the accreditation requirements of TSCA Title II; and

(d) management planners, prior to preparing a management plan for a school building subject to AHERA.

(2) The requirements of R307-1-8.3.1.A shall not apply to a person who performs an asbestos project on a single family residential dwelling that is his primary residence.

B. Application for certification. Asbestos contractors, supervisors, asbestos workers, and consultants required to be certified under Subsection R307-1-8.3.1.A(1) shall:

(1) submit a completed application to the executive secretary on forms provided by the executive secretary;

(2) pay the authorized certification fee to the Division of Air Quality; and

(3) provide evidence that they have complied with the requirements of the applicable Subsections R307-1-8.3.2, R307-1-8.3.3, R307-1-8.3.4, or R307-1-8.3.5, respectively, and any additional information requested by the executive secretary.

8.3.2 Asbestos Contractor.

(A) In order to be certified as required under Subsection R307-1-8.3.1.A(1), an asbestos contractor shall submit:

(1) a master plan that describes in detail how the contractor will comply with Section R307-1-8 during asbestos projects or asbestos inspections, including the setup procedures, work practices, decontamination and cleanup practices, and equipment that will be typically used during asbestos projects;

(2) copies of medical surveillance records of employees and the contractor's respiratory protection program as required by 29 CFR 1926.1101 (OSHA);

(3) a list of the other states where the asbestos contractor is licensed or certified for asbestos project work, if applicable; and a list of all previous names used by the asbestos contractor;

(4) a description of past compliance history relating to asbestos activities, if applicable;

(5) evidence that all asbestos workers and supervisors who conduct work on an asbestos project:

(a) subject to TSCA Title II are certified as specified in the applicable Subsections of R307-1-8.3; and

(b) in a structure are TSCA accredited or passed a training course approved in accordance with Subsection R307-1-8.4.5; and

(6) evidence that all asbestos inspectors are certified as specified in Subsection R307-1-8.3.

B. Certificate transfer prohibited. The transfer of an asbestos contractor certificate is prohibited. Whenever there is a change in the controlling interest of the legal entity certified, a new certificate is required.

8.3.3 Supervisor.

In order to be certified as a supervisor as required under Subsection R307-1-8.3.1.A, supervisors shall submit certificates of initial and current contractor/supervisor TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.4 Asbestos Worker.

In order to be certified as an asbestos worker as required under Subsection R307-1-8.3.1.A, asbestos workers shall submit certificates of initial and current asbestos worker TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.5 Consultant and Consultant-in-training.

A consultant may be certified to perform asbestos-related activities in one or more of the following disciplines: inspector; management planner; or project designer. A consultant-in-training may be certified in one or more of the following disciplines: inspector in training; management planner in training; or project designer in training.

A. Certified Consultant.

(1) In order to be certified as a consultant, an applicant shall submit:

(a) evidence from employers of the appropriate hours of experience as specified in R307-1-8.3.5.A(2), (3) (4) and (5) in performing the duties outlined for the specific discipline in Subsection R307-1-8.3.5.B.; and

(b) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

(2) The experience requirements specified under Subsection R307-1-8.3.5.A(1)(a) may be gained working as a TSCA accredited consultant, by being responsible for persons accredited as consultants,by being under the direct supervision of a TSCA accredited consultant, or by working as a consultant-in-training under the direct supervision of a certified consultant, for the specific discipline.

(3) An applicant with a bachelor's degree in engineering, architecture, industrial hygiene, science or a related field must have at least 1,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(4) An applicant with a two year associate degree in a field related to engineering, architecture, industrial hygiene, science, or a similar field must have at least 2,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(5) An applicant with a high school degree must have at least 4,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

B. Applicable experience.

(1) Inspector: experience performing the field work portion of asbestos inspections, including collecting bulk samples, categorizing asbestos containing material, assessing asbestos containing material, and preparing inspection reports;

(2) Management Planner.

(1) In order to be a consultant certified as a management planner, an applicant shall submit:

(a) evidence from employers of experience evaluating inspection reports, selecting response actions, analyzing the cost of response actions, ranking response actions, preparing operations and maintenance plans, and preparing management plans. The inspector experience requirements as specified under Subsection R307-1-8.3.5.B(1) may be substituted for Subsection R307-1-8.3.5.B(2) to meet the management planner experience requirements.

(3) Project Designer: experience designing, preparing, and evaluating specifications for asbestos abatement projects; preparing bidding documents, architectural drawings and schematic drawings of asbestos project work sites; determining the methods of asbestos abatement; and assessing the health hazards associated with asbestos containing material in structures. Registration as a professional engineer, licensed architect, or certified industrial hygienist may be substituted for experience as a project designer to meet the project designer experience requirements.

C. Consultant-in-training Certification. In order to be certified as a consultant-in-training, an applicant shall submit:

(1) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan

or from a training course approved in accordance with Subsection 8.4.5; and

(2) the name and certification number of the certified consultant(s) who will directly supervise and review the performance of all duties listed in Subsection R307-1-8.3.5.B for the specific discipline.

8.3.6 Exemption of Supervisors from Certification as an Asbestos Worker. A certified supervisor may perform the duties of an asbestos worker without being certified or accredited as an asbestos worker.

8.3.7 Action on an Application.

A. Response to Application. Within 30 calendar days after receiving a completed application, including all additional information requested, the executive secretary will issue certification or deny the application.

B. Denial of Application.

(1) The executive secretary may deny an application if the executive secretary determines that the applicant has not demonstrated compliance and/or the ability to comply with the applicable requirements, procedures, and standards established by Sections R307-1-8 and R307-10-1 (NESHAP Subpart M, the National Emission Standard for Asbestos).

(2) Upon being denied certification, the applicant may request a hearing before the Utah Air Quality Board as provided by law.

8.3.8 Suspension and Revocation.

The executive secretary may revoke or suspend any certification based upon violations of any requirement stated herein or in Section R307-10-1 (NESHAP). Justifications for suspension or revocation may include, but are not limited to: falsification or knowing omission of any written submittals required as part of Section R307-1-8, omission or improper use of work practices, improper disposal of friable asbestos-containing materials, spread of asbestos beyond the containment area, use of untrained or unaccredited workers for asbestos projects, or use of improper respirators. Certification may be revoked or suspended if the certified person fails to have his certification at the work site, permits the duplication or use of his own certification or TSCA accreditation by another, performs work for which certification or TSCA accreditation has not been received, or obtains TSCA accreditation from a training provider that does not have approval for the specific discipline in accordance with the Model Accreditation Plan.

8.3.9 Duration and Renewal of Certification.

A. Duration. Unless revoked or suspended, a certification shall remain in effect:

(1) for a period of one year from the date of issuance of certification as an asbestos contractor, or

(2) until the expiration date of the current certificate of TSCA accreditation submitted with an asbestos worker's, supervisor's, or consultant's application for certification or recertification.

B. Renewal. The executive secretary shall renew a certification annually if:

(1) the asbestos contractor:

(a) submits a completed application for renewal on forms provided by the executive secretary not sooner than 90 days nor later than 30 days from the date of expiration;

(b) has complied with all applicable requirements and rules.

(2) the consultant:

(a) submits a completed application for renewal on a form provided by the executive secretary no later than one year from the date of expiration of previous certification, and

(b) submits a certificate of TSCA accreditation for initial or refresher training in the specific discipline.

8.3.10 Procedure for Obtaining a Duplicate Certificate.

The executive secretary may issue a duplicate certificate to replace a lost, stolen, or mutilated certificate. The certificate holder shall submit a completed application for a duplicate certificate on a form provided by the executive secretary. A duplicate certificate shall have "duplicate" stamped on the face and shall bear the same number and expiration date as the original certificate.

8.4 Training.

8.4.1 Asbestos Worker Training.

Each asbestos project operator shall ensure that each asbestos worker assigned to perform work on an asbestos project for the operator has had initial and annual review training at a course approved by the executive secretary. Asbestos workers on projects subject to TSCA Title II must have the appropriate TSCA accreditation. Training courses for TSCA accreditation shall meet the specifications for a worker course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination. Training courses other than TSCA accreditation courses shall cover the following topics:

A. Initial Training. The initial training course for asbestos workers shall provide a minimum of 16 hours of training covering the topics specified below:

(1) physical characteristics of asbestos (fiber size, aerodynamics);

(2) methods of recognizing and identifying asbestos;

(3) health effects of asbestos exposure and methods used to recognize asbestos-related diseases;

(4) relationship between smoking and asbestos exposure in producing lung cancer;

(5) use of personal hygiene and protective equipment, storage and laundering of launderable clothing;

(6) purpose, proper use, fitting instructions, and limitations of respirators in accordance with OSHA 29 CFR 1926.1101;

(7) state-of-the-art work practices for performing asbestos abatement activities, including the purpose, proper construction, and maintenance of barriers and decontamination enclosure systems; posting of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods and surfactants; use of negative pressure ventilation equipment; use of glove bags; use of HEPA vacuums; and proper cleanup and disposal procedures;

(8) OSHA medical surveillance program requirements;

(9) OSHA air monitoring procedures and requirements;

(10) review of R307-1-8, NESHAP, and OSHA requirements, including information disclosure requirements, and how to contact the agencies responsible for enforcing them;

(11) individual instruction consisting of an individual qualitative respirator fit test and an opportunity to use respirators; and

(12) additional safety hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, slips, trips, and falls, and confined spaces.

B. Annual Training. Asbestos workers shall attend refresher training annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a worker refresher course in the Model Accreditation Plan.

8.4.2 Supervisor Training:

A. Initial Training. Supervisors shall complete a contractor/supervisor TSCA accreditation course in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination.

B. Annual Training. Supervisors shall attend a 1-day refresher training course annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor refresher course in the Model Accreditation Plan.

8.4.3 TSCA Accreditation.

Each person seeking TSCA accreditation shall complete the initial and refresher training outlined in the Model Accreditation Plan.

8.4.4 Examination Required.

A. The asbestos project operator shall ensure that each person who has completed the initial training specified in Subsection R307-1-8.4 has taken and passed a written closed book examination that adequately covers the topics included in the training course. A passing score for the examination is 70 percent or above. The person conducting the training course shall administer the examination.

B. Each person seeking TSCA accreditation shall pass a written closed book examination as specified in the Model Accreditation Plan. The accreditation examination required for any course approved under this subsection shall be administered by the person conducting the training course.

8.4.5 Approval of Training Courses.

A. Initial Training Courses: Persons desiring approval of courses conducted for the purpose of providing the initial training required under Section R307-1-8 shall submit the following to the executive secretary for review:

(1) name, address, phone number, and institutional affiliation of person sponsoring the course;

(2) a list of States that currently approve the training course;

(3) the course curriculum;

(4) a letter that clearly indicates how the course meets the applicable Model Accreditation Plan and Subsection R307-1-8 requirements for:

(a) length of training in hours or days, as applicable;

(b) amount and type of hands-on training, if applicable;

(c) examinations (length, format, example of examination or questions, and passing scores);

(d) topics covered in the course;

(5) a copy of all course materials (student manuals, instructor notebooks, handouts, etc.);

(6) a detailed statement about the development of the examination used in the course;

(7) names and qualifications of all course instructors, who must have academic credentials and/or field experience in asbestos abatement; and

(8) description and an example of numbered certificates issued to students who attend the course and pass the examination. The numbered certificate shall include a unique certificate number, the name of the student and the course completed, the dates of the course and the examination, an expiration date 1 year from the date the student completed the course and examination, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

B. Refresher training. Persons desiring approval of refresher training courses shall send the following information to the executive secretary:

(1) length of training;

(2) topics covered in the course;

(3) a copy of all course materials;

(4) names and qualifications of all course instructors;

(5) description and an example of numbered certificates issued to students who attend the course. The numbered certificate shall include a unique number, the name of the student, the course completed, the date of the course, and an expiration date 1 year from the date the student completed the course, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

C. The executive secretary shall issue approval of a training course if the person conducting the course:

(1) submits the written notification required in Subsections R307-1-8.4.5.A or R307-1-8.4.5.B above;

(2) demonstrates to the satisfaction of the executive secretary that the course provides the minimum training specified in the applicable subsections of R307-1-8.4.1, R307-1-8.4.2, and R307-1-8.4.3;

(3) agrees to:

(a) provide the executive secretary with the names, social security numbers, and certificate numbers of all persons successfully completing the course;

(b) provide the executive secretary with an up-to-date course schedule stating all times and locations at which the course will be presented;

(c) provide the executive secretary with the name and qualifications of any new course instructor prior to the new instructor presenting a training course;

(d) keep the records specified for training providers in the Model Accreditation Plan; and

(e) permit the executive secretary or his authorized representative to attend, evaluate and monitor any training course without receiving advance notice from the executive secretary and without charge to the executive secretary.

D. The executive secretary may revoke or suspend approval of a training course if the course does not provide training that meets the requirements of Section R307-1-8 or the Model Accreditation Plan.

E. Training courses shall be reviewed annually by the executive secretary to determine their acceptability for continued approval.

F. Training obtained from a course which has not been approved by the executive secretary may be accepted if the executive secretary determines that the course provided training equivalent to that required in R307-1-8. TSCA accreditation courses already approved in a state that has a Contractor Accreditation Program that meets the TSCA Title II Appendix C Model Plan, or approved by EPA under TSCA Title II are considered to be equivalent to the TSCA accreditation training required in Section R307-1-8.

8.4.6 Approval of New Training Course Instructors.

A. Each course provider approved under Subsection R307-1-8.4.5 shall obtain approval for any course instructor not included in the initial course approval. To obtain approval of an instructor, the course provider shall submit:

(1) the name and qualifications of the course instructor, who must have academic credentials and/or field experience in the discipline for which they are an instructor; and

(2) a list of the courses and specific topics which will be taught by the instructor.

B. Each course instructor must be approved by the executive secretary before teaching any course for TSCA accreditation purposes.

8.5 Notification.

8.5.1 NESHAP Size Asbestos Projects.

After November 20, 1990, an asbestos project operator shall submit a written notification, in accordance with this subsection, for each NESHAP size asbestos project he performs.

A. If the NESHAP size asbestos project will be performed at a location:

(1) that is within the jurisdiction of a delegated local agency, submit the written notification and pay the appropriate notification fee to the delegated local agency; or

(2) that is not within the jurisdiction of a delegated local agency, submit the written notification to the executive secretary and pay the authorized notification fee to the Division of Air Quality.

B. Send original and revised written notices by U.S. Postal Service, commercial delivery service, or hand delivery.

C. Postmark or deliver the written notice within the following time periods:

(1) If the operation is a NESHAP size asbestos project, notify the appropriate agency at least ten working days before disturbing asbestos containing material.

(2) If the operation is a planned asbestos project, notify the appropriate agency at least ten working days before the beginning of the calendar year, January 1, during which the project(s) will occur.

(3) If the operation is an emergency asbestos project, notify the appropriate agency as early as possible, but not later than, the following working day.

D. Update the written notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

E. Written notifications must include the following information:

(1) the type of notification: original or revised;

(2) the name, address, and telephone number of the owner of the structure, removal contractor, and any other contractor working on the project, and the removal contractor identification number;

(3) the type of operation: demolition or renovation;

(4) a description of the structure that includes:

(a) the size (in square feet or square meters);

(b) the number of floors;

(c) the age; and

(d) the present and prior uses;

(5) the procedures, including analytical methods, used to inspect for the presence of asbestos containing material when the asbestos project is performed in a structure subject to NESHAP;

(6) an estimate of the approximate amount of asbestos containing material to be stripped using the appropriate units;

(7) an estimate of the amount of nonfriable asbestos containing material in the affected part of the structure that will not be removed before demolition;

(8) the location and address, including building number or name and floor or room number, if appropriate, street address, city, county, state, and zip code of the structure being demolished or renovated;

(9) the scheduled starting and completion dates of asbestos removal work in a renovation or demolition, with the exception of government ordered demolitions;

(10) the beginning and ending dates of the report period for planned renovation operations;

(11) a description of procedures for handling the finding of unexpected asbestos containing material or nonfriable asbestos containing material that has become friable;

(12) a description of planned demolition or renovation work including the demolition and renovation techniques to be used and a description of the affected structural components;

(13) a description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or renovation work site;

(14) the name and location of the waste disposal site where the asbestos waste will be deposited, including the name and telephone number of waste disposal site contact; and

(15) the name, address, person to contact, and telephone number of the waste transporter;

(16) If the structure will be demolished under an order of a state or local government agency, include in the written notification the name, title, and authority of the government representative ordering the demolition, the date the order was issued, the date the demolition was ordered to commence. Attach a copy of the order to the notification.

(17) If an emergency asbestos project will be performed, include in the written notification the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or

would cause equipment damage, or unreasonable financial burden.

8.5.2 Other Asbestos Projects:

A. If an asbestos project operator performs demolition activities in a structure involving asbestos containing material in a quantity less than the NESHAP size, even if no asbestos is present, submit a written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, R307-1-8.5.1.D, R307-1-8.5.1.E(1) through (8), R307-1-8.5.1.E(10), and R307-1-8.5.1.E(11) at least ten days before commencement of the demolition.

B. If demolition of a structure is ordered by a state or local government agency because the structure is unsound and in danger of imminent collapse, submit written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, and R307-1-8.5.1.E as early as possible, but not later than, the following working day.

8.5.3 Change in Notification Date.

A. If a NESHAP size asbestos project, except for a planned asbestos project, will commence on a date other than the date submitted in the original written notification, notify the appropriate agency of the new starting date according to the following schedule:

(1) If the new starting date is later than the original starting date, provide notice by telephone as soon as possible before the original starting date and submit a revised notice in accordance with Section R307-1-8.5.1.B as soon as possible before, but no later than, the original starting date.

(2) If the new starting date is earlier than the original starting date,submit a written notice in accordance with Subsection R307-1-8.5.1.B at least ten working days before the NESHAP size asbestos project commences.

B. If a demolition operation as specified in Subsection R307-1-8.5.2.A commences on a date other than the date submitted in the original written notification, notify the appropriate agency at least ten working days before commencing of the demolition of the structure.

C. In no event shall an asbestos project covered by this subsection commence on a date other than the new starting date submitted in the revised written notice.

8.6 Work Practice Requirements.

8.6.1 NESHAP Size Asbestos Projects.

After September 1, 1987 each asbestos project operator conducting a NESHAP size asbestos project shall comply with the following work practice requirements:

A. General (including removal, demolition, renovation, encapsulation and enclosure)

(1) Remove friable asbestos-containing materials before commencing any activity which would break up the materials or prevent access to them for subsequent removal.

(2) Ensure that a site supervisor trained in accordance with Subsection R307-1-8.4 is responsible for the construction of the containment, supervision, and inspection of each asbestos project conducted by an asbestos project operator.

(3) Maintain a sufficient inventory of equipment and supplies at the project work site to ensure ability to continuously comply with Section R307-1-8.

(4) Provide barriers to isolate contaminated areas from uncontaminated areas. Barriers shall be constructed of polyethylene sheeting, or equivalent, attached securely in place, and sealed with waterproof tape or equivalent.

(a) Provide a worker decontamination system. Enter and leave asbestos contaminated work areas only through the worker decontamination system.

(b) Repair tears in the isolation barriers immediately.

(5) Provide protective outerwear to all asbestos workers and others entering asbestos contaminated areas.

(a) Remove protective outerwear and leave in a contaminated part of the work area, such as the equipment room, before leaving the contaminated area.

(b) Place nondisposable protective outerwear in a labeled, sealed impermeable plastic bag, or equivalent container, before removing it from the work area.

(c) Treat disposable protective outerwear as asbestos waste.

(6) Provide respiratory protection to all asbestos workers and others entering asbestos contaminated areas. Respiratory protection shall consist of a half-mask air-purifying respirator equipped with HEPA filters, or other appropriate respirator specified in OSHA 29 CFR 1926.1101(h).

(7) Display caution signs in accordance with OSHA 29 CFR 1926.1101 at all approaches to any location where airborne asbestos fiber levels can be expected to exceed background levels.

(8) Adequately wet all asbestos waste before sealing into containers for disposal.

(9) Place asbestos waste in sealed, leak-tight impermeable containers for disposal, using one of the following containment methods:

(a) If asbestos waste contains sharp edged components, use metal or fiber drums with locking-ring tops.

(b) Double polyethylene bags, each of at least 6-mil thickness and which can be securely sealed, may be used for asbestos waste, provided it does not contain sharp edged components.

(c) Large components or structural members covered or coated with friable asbestos-containing materials may be removed intact and wrapped in two layers of 6-mil polyethylene sheeting secured with tape for disposal.

(d) Alternative containment methods may be used if written approval is obtained in advance from the executive secretary.

(10) All drums, bags, and wrapped components specified in Subsection R307-1-8.6.1.A(9) shall be labeled as follows:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD.

(a) The warning labels as specified above shall be printed in letters of sufficient size and contrast so as to be readily visible and legible; and

(b) for asbestos waste transported off the structure site, label all drums, bags, and wrapped components with the name of the waste generator and the location where the waste was generated.

(11) Clean asbestos contamination from the outside of

disposal containers before removing them from the work area. Clean asbestos from other objects to be removed from the work area, or contain the objects to prevent release of asbestos fibers when removed from the area.

(12) Attach permanent asbestos hazard warning labels to salvaged structural components or members which are covered or coated with friable asbestos-containing materials.

(13) Filter all asbestos containing waste water to five micrometers prior to discharging to a sewer system.

(14) Apply a coating of encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces that have been stripped of asbestos-containing materials.

(15) Following asbestos abatement and before dismantling isolation barriers, drop cloths and/or at least one layer of floor and wall sheeting, perform cleanup procedures using HEPA vacuuming and wet cleaning techniques. Perform wet cleaning, using an amended water solution, followed by HEPA vacuuming after the surfaces have been allowed to dry. Repeat the sequence of wet cleaning and HEPA vacuuming until no visible asbestos residue is observed in the work area.

B. Asbestos Removal.

(1) Adequately wet all friable asbestos-containing material prior to removal.

(2) Whenever practicable, remove structural components which are coated or covered with friable asbestos-containing material intact or in large sections and carefully lower them to the floor or ground.

(3) Remove asbestos-containing material in small sections and containerize while wet. Do not allow asbestos-containing material to accumulate and become dry before containerizing.

(4) Wet structural components thoroughly with amended water prior to wrapping in polyethylene sheeting for disposal in accordance with Subsection R307-1-8.6.1.A(9)(c).

(5) Do not drop or throw asbestos-containing materials to the floor or ground level. Asbestos-containing material may be dropped to a raised scaffold or containerized at elevated levels for disposal. Drop asbestos materials removed at greater than 15 feet above the floor onto inclined chutes or scaffolding or containerize at elevated levels for eventual disposal. If friable asbestos-containing materials are removed or stripped more than 50 feet above floor or ground level, transport to the floor or ground level via dust-tight chutes or containers.

C. Renovation. Unless specifically excluded, the provisions of this section apply to encapsulation (Subsection R307-1-8.6.1.D) and enclosure (Subsection R307-1-8.6.1.E) projects as well as other renovation projects.

(1) Remove all movable objects from the work area. Perform cleaning of items and surfaces contaminated with asbestos. Cover all nonmovable objects in the work area with 4-mil polyethylene sheeting secured into place. Seal all openings between the work area and uncontaminated areas, as required in Subsection R307-1-8.6.1.A(4).

(2) Shut down and lock out all HVAC equipment servicing the work area. Seal all intake and exhaust openings and any seams in system components with 6-mil polyethylene sheeting or equivalent, and/or tape. Replace all system filters at the completion of the asbestos project and dispose of old filters as asbestos waste. Clean asbestos-contaminated ventilation system ductwork interiors.

(3) Cover floors with at least 2 layers of 6-mil polyethylene sheeting or equivalent, securely attached with waterproof duct tape or equivalent. Floor sheeting shall extend up walls at least 12 inches and be sized to minimize seams. No seams shall be located at wall/floor joints.

(4) Cover walls and other surfaces with at least 2 layers of 4-mil polyethylene sheeting or equivalent, securely attached and sealed with waterproof duct tape or equivalent. Wall sheeting shall be installed to minimize joints and shall overlap the floor sheeting at least 12 inches. No seams shall be located at wall/wall joints.

(5) Operate negative pressure ventilation units with HEPA filtration in sufficient numbers to provide one workplace air change every 15 minutes continuously from the time barrier construction is completed through the time final cleanup is completed in accordance with Subsection R307-1-8.6.1.A(15) and the barriers can be dismantled. These units shall exhaust filtered air to the outside of the building wherever practicable. Procedures for operation as detailed in EPA document No. EPA 560/5-85-024 "Guidance for Controlling Asbestos-Containing Materials in Buildings" (the purple book) Appendix J, shall be utilized.

D. Encapsulation.

(1) Prior to application of an encapsulating agent, remove loose and hanging friable asbestos-containing material in accordance with Subsection R307-1-8.6.1.B.

(2) Filler material applied to gaps in existing material shall contain no asbestos, adhere well to the substrate, and provide an adequate base for the encapsulating agent.

(3) Apply sprayed-on encapsulating agents using airless spray equipment with nozzle pressure adjusted to minimize disturbance of friable asbestos-containing materials.

(4) After encapsulation, use signs, labels, color coding, or some other mechanism to indicate the presence of encapsulated friable asbestos-containing materials.

(5) Encapsulating agents shall not be applied to friable asbestos-containing materials which are water damaged or structurally deteriorating, show poor adhesion to the surface to which they are applied, or which are in locations subject to frequent physical damage.

E. Enclosures. Enclosures constructed for the purpose of permanently containing and protecting friable asbestos-containing materials shall be specially designated by signs, labels, color coding, or some other mechanism to warn individuals who may be required to enter or disturb the enclosure of the presence of asbestos.

F. Demolition.

(1) Remove all friable asbestos-containing materials according to the requirements of Subsections R307-1-8.6.1.A (General) and R307-1-8.6.1.B (Removal) before demolition of any structure or portion of a structure which contains structural members or components composed of or covered by friable asbestos-containing material. Friable asbestos-containing materials must be removed before commencing any activity which would break up the materials or preclude access for subsequent removal.

(2) Before beginning asbestos removal seal off all doors, windows, floor drains, vents, and other openings to the outside

of the building, and to areas within the building that do not contain asbestos materials, with 6-mil polyethylene sheeting and waterproof tape or equivalent that is acceptable to the executive secretary.

(3) If a structure is to be partially demolished, HVAC equipment in the demolition area or passing through it but servicing areas of the building which will remain, shall be shut down and locked out and thoroughly sealed with 6-mil polyethylene sheeting and waterproof tape.

(4) Use a disposable drop cloth to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(5) Removal of friable asbestos-containing material prior to demolition is not required if:

(a) The asbestos is encased in concrete or similar material, or

(b) A structure is being demolished under an order of a state or local governmental agency issued because the structure is unsound and in danger of imminent collapse.

(6) If friable asbestos-containing material is not removed before demolition, adequately wet the portion of the structure containing the asbestos before demolition, and keep adequately wet during subsequent demolition, handling, and disposal.

G. Outdoor Work.

(1) The provisions of Subsections R307-1-8.6.1.A and R307-1-8.6.1.B apply to asbestos projects conducted outdoors, with the following exceptions:

(a) Construction of barriers to isolate asbestos projects performed outdoors is not required if friable asbestos-containing materials are adequately wetted during removal, handling, and disposal.

(b) In lieu of constructing a worker decontamination system, workers' outerwear may be removed, wet cleaned or HEPA vacuumed before the workers leave the work area. Outerwear removed for cleaning or disposal shall be transported from the work area in a sealed, impermeable plastic bag or equivalent container labeled in accordance with Subparagraph 8.6.1.A(10).

(2) Access to the work area shall be restricted by use of a physical obstruction to limit traffic through the area.

(3) A disposable drop cloth shall be used to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

H. Disposal.

(1) Transport and dispose of asbestos waste in a manner that will not permit the release of asbestos fibers into the air.

(2) Dispose of asbestos waste at a location approved for handling asbestos waste by the appropriate authority having jurisdiction over the chosen landfill.

(3) Ensure that friable asbestos waste not containerized in accordance with Subsection R307-1-8.6.1.A(9) is buried immediately upon deposit at the disposal site.

(4) If asbestos waste is transported by vehicle to a disposal site, mark the transport vehicle with clearly visible signs during the loading and unloading of the asbestos waste. The signs shall be securely attached and displayed in such a manner and location that a person can easily read the legend. The signs shall conform to the requirements specified in 29 CFR 1910.145(d)(4).

(5) For off structure site disposal, provide a copy of the waste shipment record as specified under Subsection R307-1-8.7.1.A(5), to the disposal site owner or operator at the same time as the asbestos waste is delivered to the disposal site.

I. Planned Asbestos Projects: Planned asbestos projects for which a NESHAP notification is required, but which consist of individual, nonscheduled abatements each of which is smaller than a NESHAP sized asbestos project, occurring during an extended period of time, may be conducted according to the provisions of Subsection R307-1-8.6.2 below if approved by the executive secretary.

8.6.2 Work Practices for Other Asbestos Projects.

After September 1, 1987 each asbestos project operator shall comply with the following work practices:

A. Any asbestos project operator conducting a less than NESHAP size asbestos project shall take precautions to prevent the release of asbestos fibers to the environment. Precautions shall include but not be limited to the following measures:

(1) Construct barriers to contain asbestos fibers released within the work area.

(2) Adequately wet friable asbestos-containing materials with amended water prior to and during removal. Keep the asbestos-containing materials adequately wet until containerized.

(3) Use a disposable drop cloth to collect asbestos waste if the physical condition of the floor or collection surface is such that the work area cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(4) Glove bags may be used instead of the barriers and drop cloths specified in Subsections R307-1-8.6.2.A(1) and R307-1-8.6.2.A(3).

(5) Use HEPA vacuum equipment and wet cleaning techniques to clean up the work area until no visible asbestos residue remains. Perform cleanup before dismantling asbestos fiber containment barriers.

(6) Promptly place asbestos waste in appropriately labeled sealed impermeable containers (polyethylene sheeting, bags and/or fiber or metal drums).

(7) Clean visible asbestos residue from the outside of containers before removing them from the work area. Clean asbestos off other objects to be removed from the work area, or contain them to prevent release of asbestos fibers when removed from the area.

(8) Prevent the discharge of visible amounts of asbestos to any sewer.

(9) Apply an encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces from which friable asbestos-containing materials have been stripped.

(10) Remove, wet clean, or HEPA vacuum workers' outerwear before workers leave the work area. Seal outerwear removed in the work area into impermeable plastic bags, labeled in accordance with Subsection R307-1-8.6.1.A(10), before taking away from the work area. Treat disposable outerwear as asbestos waste.

(11) Transport and dispose of asbestos waste as specified under Subsection R307-1-8.6.1(H).

(12) If removal of friable asbestos-containing materials is not practicable before demolition, adequately wet the asbestos materials or the structure containing the asbestos materials before demolition and keep it adequately wet during subsequent handling and disposal.

(13) Permanently attach asbestos hazard warning labels to salvaged structural components which are covered or coated with friable asbestos-containing materials.

B. Construction of barriers to contain asbestos fibers is not required for asbestos projects conducted outdoors if the friable asbestos-containing material is adequately wetted and access to the work area is limited to asbestos workers only.

C. Asbestos Inspection.

Persons taking samples for the purpose of identification of asbestos-containing materials shall comply with the following requirements:

(1) Minimize contamination of the surrounding area by use of a sampling method which will minimize disturbance of friable materials, such as sampling at places where the material is exposed or damaged, wetting the material to be sampled, or using a drop cloth or other provision for catching gross contamination.

(2) Promptly clean the sampling area using wet methods or HEPA vacuuming so that no visible friable materials remain.

(3) Apply an encapsulating agent or otherwise seal friable materials exposed during sampling.

(4) Place samples in containers and tightly seal them. Wet wipe the exterior surfaces of the containers. Place sample containers in plastic bags.

(5) After sample collection, place protective clothing, wet wipes, rags, cartridge filters, drop cloths, and other disposable equipment in a 6-mil polyethylene bag that is labeled as specified under Subsection R307-1-8.6.1.A(10).

(6) If laboratory analysis reports one or more samples as asbestos containing material, dispose of all material described in Subsection R307-18.6.2.C(5) as asbestos waste at a state approved landfill.

(7) Ensure that samples are analyzed by a method approved by the executive secretary.

(8) Any person required to be certified as an inspector in training under Subsection R307-1-8.3 shall work under the direct supervision of an inspector certified in accordance with Subsection R307-1-8.3.5.A.

8.6.3 Asbestos Projects Performed in a Single Family Residential Dwelling:

Persons who perform an asbestos project in a single family residential dwelling which is his primary residence, shall comply with Subsections R307-1-8.6.1.A(9), R307-1-8.6.1.A(10), R307-1-8.6.1.H(1), and R307-1-8.6.1.H(2).

8.6.4 Alternative Procedures.

The executive secretary may approve in writing an alternative procedure for control of emissions from an asbestos project provided that:

A. the asbestos project operator submits the alternative procedure to the executive secretary in writing;

B. the operator demonstrates to the satisfaction of the executive secretary that compliance with the prescribed procedures is not practical or not feasible or that the proposed alternative procedures provide equivalent control of asbestos; and

C. the executive secretary determines that the procedure will minimize the emission of asbestos fibers.

8.6.5 Asbestos Projects Subject to TSCA Title II.

Asbestos project operators or other persons who perform an asbestos project subject to TSCA Title II must ensure that at least one certified site supervisor is present at the work site at all times while the asbestos project is in progress. Asbestos workers must have access to certified supervisors throughout the duration of the asbestos project.

8.6.6 Activities Subject to Certification Requirements.

A. Each person required under Subsection R307-1-8.3 to have TSCA accreditation and to obtain certification shall be in physical possession of their certification card whenever performing work for which the certification is required.

B. Any person who does not have current, unexpired certification shall not perform work for which TSCA accreditation and certification under Subsection R307-1-8.3 is required.

8.7 Records.

8.7.1 Records Required.

A. Certified asbestos project contractors shall maintain records of all asbestos projects that he performs and shall make these records available to the executive secretary upon request. The records shall be retained for at least two years. Information recorded shall include the following:

(1) names and social security numbers of the asbestos workers and supervisors who performed the project;

(2) location and description of the project and amount of friable asbestos-containing material removed or area encapsulated or enclosed;

(3) starting and completion dates of the asbestos project;

(4) summary of the procedures used to comply with applicable requirements including copies of all notifications; and

(5) waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M, NESHAP.

B. Each person conducting a training course approved in accordance with Subsection R307-1-8.4.5 shall maintain records of:

(1) training course materials: copies of all course materials;

(2) instructor qualifications: instructor resumes, documents from the executive secretary approving each instructor, and the instructors who taught each particular course and the dates the instructor taught;

(3) examinations: document that each person who receives initial accreditation has achieved a passing score on the examination, the date of the examination, the training course and discipline for which the examination was given, the name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam;

(4) accreditation certificates: document all persons who have been awarded certificates, their certificate numbers, their accredited disciplines, training and expiration dates, and the training location. The records must be maintained in a manner that allows verification by telephone.

(5) records access: records required in Subsection R307-1-8.7.1 shall be made available to the executive secretary upon

request. The records shall be retained for at least three years. If a course provider ceases to provide training, the course provider shall contact the executive secretary and give the executive secretary the opportunity to take possession of all asbestos training records.

8.8 Implementation of TSCA Title II.

8.8.1 Adoption of TSCA Title II.

A. The provisions of TSCA Title II are adopted and incorporated herewith by reference. The accreditation provisions of the Model Accreditation Plan are also adopted and incorporated herewith by reference as mandatory requirements.

B. Implementation of the provisions 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR Subpart 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

8.8.2 Review and Disapproval of Management Plans.

A. Unless a deferral request under Subsection R307-1-8.8.2.B has been approved by the executive secretary, each LEA shall submit the asbestos management plans required by AHERA to the executive secretary on or before October 12, 1988. A "Required Elements for LEA Asbestos Management Plan" shall be completely filled out and submitted by the LEA with each management plan.

B. The executive secretary may approve a request by an LEA for deferral of submittal of a management plan until May 9, 1989 if the LEA submits a complete request for deferral as required by AHERA. The executive secretary shall approve or disapprove a deferral request, and explain why any request was disapproved, within 30 days of receipt of a deferral request.

C. The executive secretary shall review each management plan and return comments to the LEA within 90 days of receipt of the plan. The executive secretary may disapprove a management plan if the plan does not meet the requirements of AHERA or if the "Required Elements for LEA Asbestos Management Plans" form is not completely filled out and submitted with the plan.

D. The LEA shall revise any management plan disapproved by the executive secretary and resubmit the plan within 30 days after receipt of a notice of disapproval. The LEA may request that the Executive Secretary extend the 30-day plan revision period to 90 days, provided the plan is revised and submitted before July 9, 1989.

KEY: air pollution, motor vehicles, major sources*

August 13, 1998	**19-2-104**
Notice of Continuation June 2, 1997	**19-2-109**
	19-2-124

R307. Environmental Quality, Air Quality.
R307-210. Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

The standards of performance for new stationary sources in 40 CFR 60, published at 62 FR 48348 and effective on March 16, 1998, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "executive secretary" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources*, new source review*
August 13, 1998 19-2-104

R307. Environmental Quality, Air Quality. **August 13, 1998** **19-2-104**
R307-413. Exemptions and Special Provisions.
R307-413-8. De minimis Emissions From Air Strippers and Soil Venting Projects.

(1) An owner or operator of an air stripper or soil venting system will not be required to obtain an approval order under R307-1-3.1 to conduct remediation of contaminated groundwater or soil, if the owner or operator submits written documentation of the following to the executive secretary prior to beginning the remediation project:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-1-3.1.7.A(1)(c), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-1-3.7.3.D.

(2) After beginning the soil remediation project, the owner or operator shall submit emissions information to the executive secretary to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the executive secretary. Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the executive secretary within one month of sampling. The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the executive secretary.

(3) The following control devices do not require an approval order under R307-1-3.1 when used in relation to an air stripper or soil venting project applicable to this rule:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-413-9. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not required to obtain an approval order under R307-1-3.1 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits written documentation of the following to the executive secretary prior to beginning the remediation project:

(1) the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from a given project are less than the de minimis emissions listed in R307-1-3.1.7(c);

(2) the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-1-3.7.3.D; and

(3) the location of the remediation and where the remediated material originated.

KEY: waste oil*, permits, exemption*, de minimis*

R307. Environmental Quality, Air Quality.
R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.
R307-840-1. Purpose and Applicability.

(1) Rule R307-840 establishes procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This rule also requires that, except as outlined in (2), all lead-based paint activities, as defined in this rule, must be performed by certified individuals and firms.

(2) R307-840 applies to all individuals and firms who are engaged in lead-based paint activities as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) Each department, agency, and instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of R307-840 regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(4) While Rule R307-840 establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in R307-840 requires that the owner or occupant undertake any particular lead-based paint activity.

R307-840-2. Definitions.

Definitions found in 40 CFR 745.223, in effect as of April 21, 1998, are hereby adopted and incorporated by reference.

R307-840-3. Accreditation, Certification and Work Standards: Target Housing and Child-Occupied Facilities.

(1) The following requirements, in effect as of April 21, 1998, are adopted and incorporated by reference, with the substitutions found in (2):

(a) 40 CFR 745.225(a) through (g) and (i), 745.226 (a) through (h), 745.227, and 745.233.

(2) Substitutions.

(a) Substitute "Executive Secretary" for all references to "EPA" with the following exceptions:

(i) Definition of "Recognized laboratory" as found in Sec. 745.223.

(ii) Sec. 745.225(b)(1)(iii), Sec. 745.225(b)(1)(iv), Sec. 745.225(c)(2)(ii), Sec. 745.225(c)(10), Sec. 745.225(e)(5)(iii), and Sec. 745.225(e)(5)(iv).

(iii) The last reference to EPA in Sec. 745.226 (a)(1)(ii) and the second reference to EPA in Sec. 745.226(d)(1).

(iv) The first three references to EPA in Sec. 745.227(a)(3), Sec. 745.227(a)(4), the second reference to EPA in Sec. 745.227(e)(4), and Sec. 745.227(f)(2).

(v) Substitute "Executive Secretary or Executive Secretary's authorized representative" for references to "EPA" in Sec. 745.225(c)(12), Sec. 745.225(f)(4), and Sec. 745.225(i)(1).

(b) Substitute "Guidance on Identification of Lead-Based Paint Hazards" (Federal Register, Vol. 60, No. 175, Pgs. 47248-57) for all references to "TSCA section 403".

(3) Modifications.

(a) Change the date in Sec. 745.227(a)(1) to August 30, 1999.

(b) Modify Sec. 745.225(b)(1)(iii) by deleting the statement, "or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part,".

(c) Modify Sec. 745.225(b)(1)(iv) by deleting the statement, "or training materials approved by an authorized State or Indian Tribe".

(d) Modify Sec. 745.225(c)(2)(ii) by including the statement, "Executive Secretary-accredited," before the statement "EPA-accredited".

(e) Modify Sec. 745.225(e)(5)(iii) by deleting the statement, "or training materials approved by a State or Indian Tribe that has been authorized by EPA under subsection 745.324 to develop its refresher training course materials,".

(f) Modify Sec. 745.225 (e)(5)(iv) by deleting the statement, "or training materials approved by an authorized State or Indian Tribe".

(g) Modify Sec. 745.226 (a)(1)(ii) by including the statement, "EPA or" after the word "from".

(h) Modify Sec. 745.227 (a)(3) by deleting the statement, "Regulations, guidance, methods, or protocols issued by States and Indian Tribes that have been authorized by EPA;".

R307-840-4. Lead-Based Paint Fees.

Utah lead-based paint fees are set forth in the table below.

TABLE

Lead-Based Paint Regulations Packet (Printed Copy)	$5.00
Lead-Based Paint Regulations Packet (Computer Disk)	$3.00
Specialized Computer Generated Information (per hour)	$50.00
Certified Lead-Based Paint Firm (initial year)	$500.00
Certified Lead-Based Paint Firm (subsequent years)	$250.00
Certified Lead-Based Paint Abatement Worker, Inspector, Project Designer, Risk Assessor, or Supervisor (initial year)	$100.00
Certified Lead-Based Paint Abatement Worker, Inspector,Project Designer, Risk Assessor, or Supervisor (subsequent years)	$75.00
Lead-Based Paint Course Provider Accreditation	$500.00
Lead-Based Paint Abatement Project Notification Review	$500.00

KEY: air pollution, paint*, lead-based paint*
August 13, 1998 19-2-104

R313. Environmental Quality, Radiation Control.
R313-32. Medical Use of Radioactive Material.
R313-32-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of R313-32 are in addition to, and not in substitution for, other sections of R313.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-32-2. Definitions.

"Authorized nuclear pharmacist" means a pharmacist who is:

(a) board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties;

(b) identified as an authorized nuclear pharmacist on a Nuclear Regulatory Commission or Agreement State license that authorizes the use of radioactive material in the practice of nuclear pharmacy; or

(c) identified as an authorized nuclear pharmacist on a permit issued by a Nuclear Regulatory Commission or Agreement State specific licensee of broad scope that is authorized to permit the use of radioactive material in the practice of nuclear pharmacy.

"Authorized user" means a physician, dentist, or podiatrist who is:

(a) board certified by at least one of the boards listed in Paragraph (1) of R313-32-910, R313-32-920, R313-32-930, R313-32-940, R313-32-950, or R313-32-960;

(b) identified as an authorized user on a Nuclear Regulatory Commission or Agreement State license that authorizes the medical use of radioactive material; or

(c) identified as an authorized user on a permit issued by a Nuclear Regulatory Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material.

"Brachytherapy source" means an individual sealed source or a manufacturer-assembled source train that is not designed to be disassembled by the user.

"Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

"Dental use" means the intentional external administration of the radiation from radioactive material to human beings in the practice of dentistry in accordance with a license issued by this state.

"Dentist" means an individual licensed by this state to practice dentistry.

"Diagnostic clinical procedures manual" means a collection of written procedures that describes each method, other instructions, and precautions, by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

"Management" means the chief executive officer or that person's delegate.

"Medical institution" means an organization in which several medical disciplines are practiced.

"Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user.

"Ministerial change" means a change that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgement about whether those requirements should apply in the case at hand.

"Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131:

(i) involving the wrong individual, or wrong radiopharmaceutical; or

(ii) when both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administrated dosage and prescribed dosage exceeds 1.11 MBq (30 uCi).

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

(i) involving the wrong individual, wrong radiopharmaceutical, or wrong route of administration; or

(ii) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

(i) involving the wrong individual or wrong treatment site; or

(ii) when the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose.

(d) A teletherapy radiation dose:

(i) involving the wrong individual, wrong mode of treatment, or wrong treatment site;

(ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose;

(iii) when the calculated weekly administered dose exceeds the weekly prescribed dose by 30 percent or more of the weekly prescribed dose; or

(iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

(i) involving the wrong individual, wrong radionuclide, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

(ii) involving a sealed source that is leaking;

(iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than 1.11 MBq (30 uCi) of either sodium

iodide I-125 or I-131, or both:

(i) involving the wrong individual, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; and

(ii) when the dose to the individual exceeds 0.05 Sv (five rems) effective dose equivalent or 0.5 Sv (50 rems) dose equivalent to any individual organ.

"Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Pharmacist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

"Podiatric use" means the intentional external administration of the radiation from radioactive material to human beings in the practice of podiatry in accordance with a license issued by this State.

"Podiatrist" means an individual licensed by this State to practice podiatry.

"Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) in a written directive; or

(b) either in the diagnostic clinical procedures manual or in an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

"Prescribed dose" means:

(a) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) for teletherapy, the total dose and dose per fraction as documented in the written directive; or

(c) for brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive.

"Radiation Safety Officer" means the individual identified as the Radiation Safety Officer on a license issued by the Executive Secretary.

"Recordable event" means the administration of:

(a) a radiopharmaceutical or radiation without a written directive where a written directive is required;

(b) a radiopharmaceutical or radiation where a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) a radiopharmaceutical dosage greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131 when both:

(i) the administered dosage differs from the prescribed dosage by more than ten percent of the prescribed dosage, and

(ii) the difference between the administered dosage and prescribed dosage exceed 555 kBq (15 uCi);

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, when the administered dosage differs from the prescribed dosage by more than ten percent of the prescribed dosage;

(e) A teletherapy radiation dose when the calculated weekly administered dose exceeds the weekly prescribed dose by 15 percent or more of the weekly prescribed dose; or

(f) A brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than ten percent of the prescribed dose.

"Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"Teletherapy physicist" means the individual identified as the teletherapy physicist on a license issued by the Executive Secretary.

"Visiting authorized user" means an authorized user who is not identified as an authorized user on the license of the licensee being visited.

"Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this definition, containing the following information:

(a) for any administration of quantities greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131: the dosage;

(b) for a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) for gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) for teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) for high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) for all other brachytherapy:

(i) prior to implantation: the radionuclide, number of sources, and source strengths; and

(ii) after implantation but prior to completion of the procedure: the radionuclide, treatment site, and total source strength and exposure time, or equivalently, the total dose.

R313-32-6. Provisions for Research Involving Human Subjects.

A licensee may conduct research involving human subjects using radioactive material provided that the research is conducted, funded, supported, or regulated by a Federal Agency which has implemented the Federal Policy for the Protection of Human Subjects. Otherwise, a licensee shall apply for and receive approval of a specific amendment to its Utah license before conducting such research. Both types of licensees shall, at a minimum, obtain informed consent from the human subjects and obtain prior review and approval of the research activities by an "Institutional Review Board" in accordance with the meaning of these terms as defined and described in the Federal Policy for the Protection of Human Subjects.

R313-32-7. FDA, other Federal, and State Requirements.

Nothing in R313-32 relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs or devices.

R313-32-11. License Required.

(1) A person shall not manufacture, produce, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued by the

Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State, or as allowed in R313-32-11(2) or (3).

(2) An individual shall receive, possess, use, or transfer radioactive material in accordance with the Utah Radiation Control Rules under the supervision of an authorized user as provided in R313-32-25, unless prohibited by license condition.

(3) An individual may prepare unsealed radioactive material for medical use in accordance with R313-32 under the supervision of an authorized nuclear pharmacist or authorized user as provided in R313-32-25, unless prohibited by license condition.

R313-32-12. Application for License, Amendment, or Renewal.

(1) If the application is for medical use sited in a medical institution, only the institution's management may apply. If the application is for medical use not sited in a medical institution, any person may apply.

(2) An application for a license for medical use of radioactive material as described in R313-32-100, R313-32-200, R313-32-300, R313-32-400, and R313-32-500 must be made by filing of Form DRC-02, "Application for Materials License." For guidance in completing the form, refer to the instructions in the most current versions of the appropriate Regulatory Guides. A request for a license amendment or renewal may be submitted in a letter format.

(3) An applicant that satisfies the requirements specified in R313-22-50(2) may apply for a Type A specific license of broad scope.

R313-32-13. License Amendment.

A licensee shall apply for and receive a license amendment:

(1) before it receives or uses radioactive material for a clinical procedure permitted under R313-32 but not permitted by the license issued pursuant to R313-32;

(2) before it permits anyone to work as an authorized user or authorized nuclear pharmacist under the license, except an individual who is:

(a) an authorized user certified by the organizations specified in paragraph (1) of R313-32-910, R313-32-920, R313-32-930, R313-32-940, R313-32-950, or R313-32-960;

(b) an authorized nuclear pharmacist certified by the organization specified in paragraph (1) of R313-32-980;

(c) identified as an authorized user or an authorized nuclear pharmacist on a Nuclear Regulatory Commission or an Agreement State license that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively, or

(d) identified as an authorized user or an authorized nuclear pharmacist on a permit issued by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State specific licensee of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively.

(3) before it changes Radiation Safety Officers or Teletherapy Physicists;

(4) before it orders radioactive material in excess of the amount, or radionuclide or form different than authorized on the license; and

(5) before it adds to or changes the address or addresses of use identified on the license.

R313-32-14. Notifications.

(1) A licensee shall provide to the Executive Secretary a copy of the board certification, the Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of broad scope for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user or an authorized nuclear pharmacist pursuant to R313-32-13(2)(a) through (2)(d).

(2) A licensee shall notify the Executive Secretary by letter no later than 30 days after:

(a) an authorized user, an authorized nuclear pharmacist, Radiation Safety Officer, or teletherapy physicist permanently discontinues performance of duties under the license or has a name change; or

(b) the licensee's mailing address changes.

(3) The licensee shall mail the documents required in R313-32-14 to the address identified in R313-12-110.

R313-32-15. Exemptions Regarding Type A Specific Licenses of Broad Scope.

A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(1) The provisions of R313-32-13(2);

(2) The provisions of R313-32-13(5) regarding additions to or changes in the areas of use only at the addresses specified in the license;

(3) The provisions of R313-32-14(1); and

(4) The provisions of R313-32-14(2)(a) for an authorized user or an authorized nuclear pharmacist.

R313-32-18. License Issuance.

The Executive Secretary shall issue a license for the medical use of radioactive material for a term of five years provided the following requirements are met:

(1) The applicant has filed form DRC-02 "Application for Materials License - Medical" in accordance with the instructions in R313-22-32.

(2) The applicant has paid any applicable fee as provided in R313-70.

(3) The Executive Secretary finds the applicant equipped and committed to observe the safety standards established in R313-15 for the protection of the public health and safety.

(4) In addition to the requirements set forth in R313-22-33 a specific license for human use of radioactive material in institutions will be issued if:

(a) the applicant has appointed a radiation safety committee to coordinate the use of radioactive material throughout that institution and to maintain surveillance over the institution's radiation safety program; and

(b) if the application is for a license to use unspecified quantities or multiple types of radioactive material, the applicant's staff has training and experience in the use of a variety or radioactive materials for a variety of human uses, and meets the training and experience requirements of R313-32.

(5) A specific license for the human use of radioactive material will be issued to an individual physician if the

following are complied with:

(a) The applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patients whenever it is advisable.

(b) The applicant has training and experience as required by R313-32, in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

(c) The application is for use in the applicant's practice in an office outside a medical institution.

(d) The Executive Secretary shall not approve an application by an individual physician or group of physicians for a specific license to receive, possess or use radioactive material on the premises of a medical institution unless:

(i) the use of radioactive material is limited to:

(A) the administration of radiopharmaceuticals for diagnostic or therapeutic purposes;

(B) the performance of diagnostic studies on patients to whom a radiopharmaceutical has been administered;

(C) the performance of in vitro diagnostic studies;

(D) the calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation and diagnostic instrumentation;

(ii) the physician brings the radioactive material with him and removes the radioactive material when he departs. The institution cannot receive, possess or store radioactive material other than the amount of material remaining in the patient; or

(iii) the medical institution does not hold a radioactive material license issued pursuant to the provisions of R313-32-18(4).

R313-32-19. Specific Exemptions.

The Board may, upon application of any interested person or upon its own initiative, grant exemptions from the rules in R313-32 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. The Board will review requests for exemptions from training and experience requirements with the assistance of the Executive Secretary.

R313-32-20. ALARA Program.

(1) The licensee shall develop and implement a written radiation protection program that includes provisions for keeping doses ALARA.

(2) To satisfy the requirement of R313-32-20(1) one of the following shall be implemented:

(a) At a medical institution, management, the Radiation Safety Officer, and authorized users shall participate in the program as requested by the Radiation Safety Committee.

(b) For licensees that are not medical institutions, management and authorized users shall participate in the program as requested by the Radiation Safety Officer.

(3) The program shall include notice to workers of the program's existence and workers' responsibility to help keep dose equivalents ALARA, a review of summaries of the types and amounts of radioactive material used, occupational doses, changes in radiation safety procedures and safety measures, and continuing education and training for personnel who work with or in the vicinity of radioactive material. The purpose of the review is to ensure that licensees make a reasonable effort to maintain individual and collective occupational doses ALARA.

R313-32-21. Radiation Safety Officer.

(1) A licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(2) The Radiation Safety Officer shall:

(a) investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, misadministrations, and other deviations from approved radiation safety practices and implement corrective actions as necessary;

(b) establish, collect in one binder or file, and implement written policy and procedures for:

(i) authorizing the purchase of radioactive material;

(ii) receiving and opening packages of radioactive material;

(iii) storing radioactive material;

(iv) keeping an inventory record of radioactive material;

(v) using radioactive material safely;

(vi) taking emergency action if control of radioactive material is lost;

(vii) performing periodic radiation surveys;

(viii) performing checks of survey instruments and other safety equipment;

(ix) disposing of radioactive material;

(x) training personnel who work in or frequent areas where radioactive material is used or stored;

(xi) keeping a copy of all records and reports required by the Utah Radiation Control Rules, a copy of these rules, a copy of each licensing request, license and amendment, and written policy and procedures required by the rules;

(c) brief management once a year on the radioactive material program;

(d) establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure;

(e) establish personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the Radiation Safety Officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence;

(f) for medical use not at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management; and

(g) for medical use at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

R313-32-22. Radiation Safety Committee.

The medical institution licensee shall establish a Radiation Safety Committee to oversee the use of radioactive material.

(1) The Committee shall meet the following administrative requirements:

(a) Membership shall consist of at least three individuals and shall include an authorized user of each type of use

permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. Other members may be included as the licensee deems appropriate.

(b) The Committee shall meet at least quarterly.

(c) To establish a quorum and to conduct business, at least one-half of the Committee's membership shall be present, including the Radiation Safety Officer and the management's representative.

(d) The minutes of each Radiation Safety Committee meeting shall include:

(i) the date of the meeting;

(ii) members present;

(iii) members absent;

(iv) summary of deliberations and discussions;

(v) recommended actions and the numerical results of all ballots; and

(vi) ALARA program reviews described in R313-32-20.

(e) The Committee shall promptly provide the members with copies of the meeting minutes, and retain one copy for the duration of the license.

(2) To oversee the use of licensed material, the Committee shall:

(a) review recommendations on ways to maintain individual and collective doses ALARA;

(b)(i) review, on the basis of safety and with regard to the training and experience standards in R313-32-900 through R313-32-981, and approve or disapprove any individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the Radiation Safety Officer, or a Teletherapy Physicist before submitting a license application or request for amendment or renewal; or

(ii) review, pursuant to R313-32-13(2)(a) through (2)(d), on the basis of the board certification, the license, or the permit identifying an individual, and approve or disapprove any individual prior to allowing that individual to work as an authorized user or authorized nuclear pharmacist;

(c) review on the basis of safety, and approve with the advice and consent of the Radiation Safety Officer and the management representative, or disapprove minor changes in radiation safety procedures that are not potentially important to safety and are permitted under R313-32-31;

(d) review quarterly, with the assistance of the Radiation Safety Officer, a summary of the occupational radiation dose records of personnel working with radioactive material;

(e) review quarterly, with the assistance of the Radiation Safety Officer, incidents involving radioactive material with respect to cause and subsequent actions taken; and

(f) review annually, with the assistance of the Radiation Safety Officer, the radiation safety program.

R313-32-23. Statements of Authority and Responsibilities.

(1) A licensee shall provide the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, sufficient authority, organizational freedom, and management prerogative, to:

(a) identify radiation safety problems;

(b) initiate, recommend, or provide corrective actions; and

(c) verify implementation of corrective actions.

(2) A licensee shall establish and state in writing the authorities, duties, responsibilities, and radiation safety activities of the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, and retain the current edition of these statements as a record until the Executive Secretary terminates the license.

R313-32-25. Supervision.

(1) A licensee that permits the receipt, possession, use or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by R313-32-11(2) shall:

(a) instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of radioactive material and in the licensee's written quality management program;

(b) require the supervised individual to follow the instructions of the supervising authorized user, follow the written radiation safety and quality management procedures established by the licensee, and comply with the Utah Radiation Control Rules and the license conditions with respect to the use of radioactive material; and

(c) periodically review the supervised individual's use of radioactive material and the records kept to reflect this use.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by R313-32-11(3), shall:

(a) instruct the supervised individual in the preparation of radioactive material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of radioactive material;

(b) require the supervised individual to follow the instructions given pursuant to R313-32-25(2)(a) and to comply with these rules and license conditions; and

(c) require the supervising authorized nuclear pharmacist or physician who is an authorized user to periodically review the work of the supervised individual as it pertains to preparing radioactive material for medical use and the records kept to reflect that work.

(3) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

R313-32-29. Administrative Requirements that Apply to the Providers of Mobile Nuclear Medicine Service.

(1) The Executive Secretary will license mobile nuclear medicine service only in accordance with R313-32-100, R313-32-200, and R313-32-500.

(2) Mobile nuclear medicine service licensees shall obtain a letter signed by the management of each client for which services are rendered that authorizes use of radioactive material at the client's address of use. The mobile nuclear medicine service licensee shall retain the letter for three years after the last provision of service.

(3) If a mobile nuclear medicine service provides services that the client is also authorized to provide, the client is responsible for assuring that services are conducted in

accordance with the rules while the mobile nuclear medicine service is under the client's direction.

(4) A mobile nuclear medicine service shall not order radioactive material to be delivered directly from the manufacturer or distributor to the client's address of use.

R313-32-31. Radiation Safety Program Changes.

(1) A licensee may make minor changes in radiation safety procedures that are not potentially important to safety, i.e., ministerial changes, that were described in the application for license, renewal, or amendment except for those changes in R313-32-13 and R313-32-606. A licensee is responsible for assuring that any change made is in compliance with the requirements of the rules and the license.

(2) A licensee shall retain a record of each change until the license has been renewed or terminated. The record shall include the effective date of the change, a copy of the old and new radiation safety procedures, the reason for the change, a summary of radiation safety matters that were considered before making the change, the signature of the Radiation Safety Officer, and the signatures of the affected authorized users and of management or, in a medical institution, the Radiation Safety Committee's chairman and the management representative.

R313-32-32. Quality Management Program.

(1) The applicant or licensee shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from radioactive material will be administered as directed by the authorized user. The quality management program shall include written policies and procedures to meet the following specific objectives:

(a) that, prior to administration, a written directive is prepared for:

(i) teletherapy radiation doses;

(ii) gamma stereotactic radiosurgery radiation doses;

(iii) brachytherapy radiation doses;

(iv) administration of quantities greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131;

(v) therapeutic administration of a radiopharmaceutical, other than sodium iodide I-125 or I-131;

(b) that the following are exceptions to the written directive:

(i) if, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision;

(ii) also, a written revision to an existing written directive may be made for a diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next teletherapy fractional dose; or

(iii) if, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared within 24 hours of the oral directive;

(c) that, prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive;

(d) that final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

(e) that each administration is in accordance with the written directive; and

(f) that each unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(2) The licensee shall:

(a) develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

(i) a representative sample of patient and human research subject administrations,

(ii) all recordable events, and

(iii) all misadministrations to verify compliance with each aspect of the quality management program; these reviews shall be conducted at intervals no greater than 12 months;

(b) evaluate these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of R313-32-32(1); and

(c) retain records of the review, including the evaluations and findings of the review, in an auditable form for three years.

(3) The licensee shall evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by:

(a) assembling the relevant facts including the cause;

(b) identifying what, if applicable, corrective action is required to prevent recurrence; and

(c) retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if applicable, was taken.

(4) The licensee shall retain:

(a) a written directive; and

(b) a record of each administered radiation dose or radiopharmaceutical dosage where a written directive is required in R313-32-32(1)(a), in an auditable form, for three years after the date of administration.

(5) The licensee may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased. The licensee shall furnish the modification to the Executive Secretary within 30 days after the modification has been made.

(6)(a) Applicants for a new license, as applicable, shall submit to the Executive Secretary in accordance with R313-12-110 a quality management program as part of the application for a license and implement the program upon issuance of the license by the Executive Secretary.

(b) Existing licensees, as applicable, shall submit to the Executive Secretary in accordance with R313-12-110, prior to March 1, 1995, a written certification that the quality management program has been implemented along with a copy

of the program.

R313-32-33. Notifications, Reports and Records of Misadministrations.

(1) For a misadministration:

(a) the licensee shall notify the Executive Secretary by telephone no later than the next calendar day after discovery of the misadministration.

(b) the licensee shall submit a written report to the Executive Secretary within 15 days after discovery of the misadministration. The written report shall include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the individual who received the misadministration; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not; and if there was notification, what information was provided. The report must not include the individual's name or any other information that could lead to identification of the individual. To meet the requirements of R313-32-33, the notification of the individual receiving the misadministration may be made instead to that individual's responsible relative or guardian, when appropriate.

(c) the licensee shall notify the referring physician and also notify the individual receiving the misadministration of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the individual receiving the misadministration cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(d) if the individual was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the individual by sending either:

(i) a copy of the report that was submitted to the Executive Secretary; or

(ii) a brief description of both the event and the consequences as they may affect the individual, provided a statement is included that the report submitted to the Executive Secretary can be obtained from the licensee.

(2) The licensee shall retain a record of each misadministration for five years. The record shall contain the names of all individuals involved (including the prescribing physician, allied health personnel, the individual who received the misadministration, and that individual's referring physician, if applicable), the individual's social security number or other identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the individual, improvements needed to prevent recurrence, and the actions taken to prevent recurrence.

(3) Aside from the notification requirement, nothing in R313-32-33 affects any rights or duties of licensees and physicians in relation to each other, to individuals receiving misadministrations, or to that individual's responsible relative or guardian.

R313-32-49. Suppliers for Sealed Sources or Devices for Medical Use.

A licensee may use for medical use only:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to the rules in R313-22 and R313-22-75(10) or the equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to R313-22 or the equivalent requirements of the Nuclear Regulatory Commission or an Agreement State.

R313-32-50. Possession, Use, Calibration, and Check of Dose Calibrators.

(1) A licensee shall possess and use a dose calibrator to measure the activity of dosages of photon-emitting radionuclides prior to administration to each patient or human research subject.

(2) A licensee shall:

(a) check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy this requirement, the check shall be done on a frequently used setting with a sealed source of not less than 370 kBq (ten uCi) of radium-226 or 1.85 MBq (50 uCi) for a photon-emitting radionuclide;

(b) test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within five percent of its stated activity, whose activity is at least 370 kBq (ten uCi) for radium-226 and 1.85 MBq (50 uCi) for a photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;

(c) test each dose calibrator for linearity upon installation and at least quarterly thereafter over a range from the highest dosage that will be administered to a patient or human research subject to 1.1 MBq (30 uCi); and

(d) test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(3) A licensee shall also perform appropriate checks and tests required by R313-32-50 following adjustment or repair of the dose calibrator.

(4) A licensee shall mathematically correct dosage readings for geometry or linearity errors that exceed ten percent if the dosage is greater than 370 kBq (ten uCi) and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds ten percent.

(5) A licensee shall retain a record of each check and test required by R313-32-50 for three years unless directed otherwise. The records required in R313-32-50(2)(a) through (2)(d) shall include:

(a) for R313-32-50(2)(a), the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check;

(b) for R313-32-50(2)(b), the model and serial number of the dose calibrator, the model and serial number of each source used, the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the identity of the individual performing the test;

(c) for R313-32-50(2)(c), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the identity of the individual performing the test; and

(d) for R313-32-50(2)(d), the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the identity of the individual performing the test.

R313-32-51. Calibration and Check of Survey Instruments.

(1) A licensee shall calibrate the survey instruments used to show compliance with R313-32 before first use, annually, and following repair. The licensee shall:

(a) calibrate all scales with readings up to ten mSv (1000 mrem) per hour with a radiation source;

(b) calibrate two separated readings on each scale that shall be calibrated. The readings shall be separated by 50 percent of the scale reading; and

(c) conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) When calibrating a survey instrument, the licensee shall consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent, and shall conspicuously attach a correction chart or graph to the instrument.

(3) A licensee shall check each survey instrument for proper operation with the dedicated check source each day of use. A licensee is not required to keep records of these checks.

(4) A licensee shall retain a record of each survey instrument calibration for three years. The record shall include:

(a) a description of the calibration procedure; and

(b) the date of the calibration, a description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, and the signature of the individual who performed the calibration.

R313-32-52. Possession, Use, Calibration, and Check of Instruments to Measure Dosages or Alpha- or Beta-emitting Radionuclides.

(1) R313-32-52 does not apply to unit dosages of alpha- or beta-emitting radionuclides that are obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State.

(2) For other than unit dosages obtained pursuant to R313-32-52(1), a licensee shall possess and use instrumentation to measure the radioactivity of alpha- or beta-emitting radionuclides. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha- or beta-emitting radionuclides prior to administration to each patient or human research subject. In addition, the licensee shall:

(a) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) check each instrument for constancy and proper operation at the beginning of each day of use.

R313-32-53. Measurement of Dosages of Unsealed Radioactive Material for Medical Use.

A licensee shall:

(1) measure the activity of each dosage of a photon-emitting radionuclide prior to medical use;

(2) measure, by direct measurement or by combination of measurements and calculations, the activity of each dosage of an alpha- or beta-emitting radionuclide prior to medical use, except for unit dosages obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; and

(3) retain a record of the measurements required by R313-32-53 for three years. To satisfy this requirement, the record shall contain the following:

(a) generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(b) patient's or human research subject's name, and identification number if one has been assigned;

(c) prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 1.1 MBq (30 uCi);

(d) date and time of the measurement; and

(e) initials of the individual who made the record.

R313-32-57. Authorization for Calibration and Reference Sources.

Persons authorized by R313-32-11 for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration, and reference use:

(1) sealed sources manufactured and distributed by a person licensed pursuant to R313-22-75(10) or equivalent Nuclear Regulatory Commission or Agreement State regulations and that do not exceed 555 MBq (15 mCi) each;

(2) radioactive material listed in R313-32-100 or R313-32-200 with a half-life not longer than 100 days in individual amounts not to exceed 555 MBq (15 mCi);

(3) radioactive material listed in R313-32-100 or R313-32-200 with a half-life longer than 100 days in individual amounts not to exceed 7.4 MBq (200 uCi); and

(4) technetium-99m in individual amounts not to exceed 1.85 GBq (50 mCi).

R313-32-59. Requirements for Possession of Sealed Sources and Brachytherapy Sources.

(1) A licensee in possession of sealed sources or brachytherapy sources shall follow the radiation safety and handling instructions supplied by the manufacturer, and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(2) A licensee in possession of a sealed source shall:

(a) test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(b) test the source for leakage at intervals not to exceed six months or at other intervals approved by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State and described in the label or brochure that accompanies the source.

(3) To satisfy the leak test requirements of R313-32-59, the licensee must:

(a) take a wipe sample from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which radioactive contamination might be expected to accumulate or wash the source in a small volume of detergent solution and treat the entire volume as the sample;

(b) take teletherapy and other device source test samples when the source is in the "off" position; and

(c) measure the sample so that the leakage test can detect the presence of 185 Bq (0.005 uCi) of radioactive material on the sample.

(4) A licensee shall retain leakage test records for five years. The records shall contain the model number, the serial number if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in becquerels or microcuries, a description of the method used to measure each test sample, the date of the test, and the signature of the Radiation Safety Officer.

(5) If the leakage test reveals the presence of 185 Bq (0.005 uCi) or more of removable contamination, the licensee shall:

(a) immediately withdraw the sealed source from use and store it in accordance with the requirements in R313-15; and

(b) file a report within five days of the leakage test with the Executive Secretary describing the equipment involved, the test results, and the action taken.

(6) A licensee need not perform a leakage test on the following sources:

(a) sources containing only radioactive material with a half-life of less than 30 days;

(b) sources containing only radioactive material as a gas;

(c) sources containing 3.7 MBq (100 uCi) or less of beta or gamma-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) sources stored and not being used. The licensee shall, however, test each source for leakage before use or transfer unless it has been leakage-tested within six months before the date of use or transfer; and

(e) seeds of iridium-192 encased in nylon ribbon.

(7) A licensee in possession of a sealed source or brachytherapy source shall conduct a quarterly physical inventory of all sources in its possession. The licensee shall retain inventory records for five years. The inventory records shall contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its nominal activity, the location of each source, and the signature of the Radiation Safety Officer.

(8) A licensee in possession of a sealed source or brachytherapy source shall measure the ambient dose rates quarterly in all areas where sources are stored. This does not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(9) A licensee shall retain a record of each survey required in R313-32-59(8) for three years. The record shall include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area expressed in microsieverts or millirem per hour, the survey instrument used, and the signature of the Radiation Safety Officer.

R313-32-60. Syringe Shields and Labels.

(1) A licensee shall keep syringes that contain radioactive material to be administered in a radiation shield.

(2) To identify its contents, a licensee shall conspicuously label each syringe or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label shall show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's or the human research subject's name.

(3) A licensee shall require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit and shall require each individual to use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient or human research subject.

R313-32-61. Vial Shields and Labels.

(1) A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

(2) To identify its contents, a licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical. The label shall show the radiopharmaceutical name or its abbreviation.

R313-32-70. Surveys for Contamination and Ambient Radiation Exposure Rate.

(1) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(2) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

(3) A licensee shall conduct the surveys required by R313-32-70(1) and (2) so as to be able to detect dose rates as low as one uSv (0.1 mrem) per hour.

(4) A licensee shall establish radiation dose rate trigger levels for the surveys required by R313-32-70(1) and (2). A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if a dose rate exceeds a trigger level.

(5) A licensee shall survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(6) A licensee shall conduct the survey required by R313-32-70(5) so as to be able to detect contamination on each wipe sample of 2200 disintegrations per minute, (0.001 uCi or 37 Bq).

(7) A licensee shall establish removable contamination trigger levels for the surveys required by R313-32-70(5). A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if contamination exceeds the trigger level.

(8) A licensee shall retain a record of each survey for three years. The record shall include the date of the survey, a plan of each area surveyed, the trigger level established for each area, the detected dose rate at several points in each area expressed in microsieverts or millirem per hour or the removable contamination in each area expressed in disintegrations per minute (becquerels or curies) per 100 square centimeters, the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

R313-32-75. Release of Individuals Containing Radiopharmaceuticals or Permanent Implants.

(1) The licensee may authorize the release from its control of any individual who has been administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 mSv (0.5 rem).

NOTE: The Nuclear Regulatory Commission Regulatory Guide 8.39, "Release of Patients Administered Radioactive Materials," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 5 mSv (0.5 rem).

(2) The licensee shall provide the released individual with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 mSv (0.1 rem). If the dose to a breast-feeding infant or child could exceed 1 mSv (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(a) guidance on the interruption or discontinuation of breast-feeding, and

(b) information on the consequences of failure to follow the guidance.

(3) The licensee shall maintain a record of the basis for authorizing the release of an individual, for three years after the date of release, if the total effective dose equivalent is calculated by:

(a) using the retained activity rather than the activity administered,

(b) using an occupancy factor less than 0.25 at 1 meter,

(c) using the biological or effective half-life, or

(d) considering the shielding by tissue.

(4) The licensee shall maintain a record, for three years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding 5 mSv (0.5 rem).

R313-32-80. Technical Requirements that Apply to the Providers of Mobile Nuclear Medicine Service.

A licensee providing mobile nuclear medicine service shall:

(1) transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals that are intended for reconstitution of radiopharmaceutical kits;

(2) bring into each address of use all radioactive material to be used and, before leaving, remove all unused radioactive material and all associated waste;

(3) secure or keep under constant surveillance and immediate control all radioactive material when in transit or at an address of use;

(4) check survey instruments and dose calibrators as described in R313-32-50 and R313-32-51 and check all other transported equipment for proper function before medical use at each address of use;

(5) carry a radiation detection survey meter in each vehicle that is being used to transport radioactive material, and, before leaving a client address of use, survey all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed; and

(6) retain a record of each survey required in R313-32-80(5) for three years. The record shall include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area of use expressed in microsieverts or millirems per hour, the instrument used to make the survey, and the initials of the individual who performed the survey.

R313-32-90. Storage of Volatiles and Gases.

A licensee shall store volatile radiopharmaceuticals and radioactive gases in the shipper's radiation shield and container. A licensee shall store a multi-dose container in a fume hood after drawing the first dosage from it.

R313-32-92. Decay-In-Storage.

(1) A licensee may hold radioactive material with a physical half-life of less than 65 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of R313-15-1001 if it:

(a) holds radioactive material for decay a minimum of ten half-lives;

(b) monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey meter set on its most sensitive scale and with no interposed shielding;

(c) removes or obliterates all radiation labels; and

(d) separates and monitors each generator column individually with radiation shielding removed to ensure that it has decayed to background radiation level before disposal.

(2) A licensee shall retain a record of each disposal permitted under R313-32-92(1) for three years. The record

shall include the date of the disposal, the date on which the radioactive material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

R313-32-100. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies.

A licensee may use for uptake, dilution, or excretion studies any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-120. Possession of Survey Instrument.

A licensee authorized to use radioactive material for uptake, dilution, and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour.

R313-32-200. Use of Unsealed Radioactive Material for Imaging and Localization Studies.

A licensee may use for imaging and localization studies any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-204. Permissible Molybdenum-99 Concentration.

(1) A licensee shall not administer to humans a radiopharmaceutical containing more than 5.55 kBq (0.15 uCi) of molybdenum-99 per 37.0 MBq (one mCi) of technetium-99m.

(2) A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in each elute or extract.

(3) A licensee that is required to measure molybdenum concentration shall retain a record of each measurement for three years. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in megabecquerels or millicuries, the measured activity of the molybdenum expressed in kilobecquerels or microcuries, the ratio of the measures expressed as kilobecquerels or microcuries of molybdenum per megabecquerels or millicuries of technetium, the time and date of the measurement, and the initials of the individual who made the measurement.

R313-32-205. Control of Aerosols and Gases.

(1) A licensee that administers radioactive aerosols or gases shall do so in a room with a system that will keep airborne concentrations within the limits prescribed in R313-15-201(4) and R313-15-301. The system shall either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(2) A licensee shall administer radioactive gases in rooms that are at negative pressure compared to surrounding rooms.

(3) Before receiving, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a spill to reduce the concentration in the room to the occupational limit as specified in R313-15-201. The calculation shall be based on the highest activity of gas handled in a single container, the air volume of the room, and the measured available air exhaust rate.

(4) A licensee shall make a record of the calculations required in R313-32-205(3) that includes the assumptions, measurements, and calculations made and shall retain the record for the duration of use of the area. A licensee shall also post the calculated time and safety measures to be instituted in case of a spill at the area of use.

(5) A licensee shall check the operation of reusable collection systems each month, and measure the ventilation rates available in areas of radioactive gas use each six months. Records of the measurement shall be kept for three years.

R313-32-220. Possession of Survey Instruments.

A licensee authorized to use radioactive material for imaging and localization studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range of one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-300. Use of Unsealed Radioactive Material for Therapeutic Administration.

A licensee may use for therapeutic administration any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-310. Safety Instruction.

(1) A licensee shall provide radiation safety instruction for all personnel caring for the patient or the human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R313-32-75. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

(a) patient or human research subject control;

(b) visitor control;

(c) contamination control;

(d) waste control; and

(e) notification of the Radiation Safety Officer in case of the patient's or the human research subjects's death or medical emergency.

(2) A licensee shall keep for three years a list of individuals receiving instruction required by R313-32-310(1), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-315. Safety Precautions.

(1) For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R313-32-75, a licensee shall:

(a) provide a private room with a private sanitary facility;

(b) post the patient's or the human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or the human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room;

(c) authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of R313-15, and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in microsieverts or millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey;

(e) either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste;

(f) survey the patient's or the human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room shall not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

(g) measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three days after administering the dosage, and retain for the period required by R313-15-1107 a record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

(2) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

R313-32-320. Possession of Survey Instruments.

A licensee authorized to use radioactive material for radiopharmaceutical therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-400. Use of Sources for Brachytherapy.

A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(2) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(3) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(4) Iridium-192 as seeds encased in nylon ribbon for interstitial and intracavitary treatment of cancer and as seeds for topical treatment of cancer;

(5) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions;

(6) Iodine-125 as a sealed source in seeds for topical, interstitial and intracavitary treatment of cancer;

(7) Palladium-103 as a sealed source in seeds for interstitial treatment of cancer.

R313-32-404. Release of Patients or Human Research Subjects Treated With Temporary Implants.

(1) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a radiation survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed. The licensee shall not release from confinement for medical care a patient or a human research subject treated by temporary implant until all sources have been removed.

(2) A licensee shall retain a record of patient or human research subject surveys for three years. Each record shall include the date of the survey, the name of the patient or the human research subject, the dose rate from the patient or the human research subject expressed as microsieverts per hour or millirem per hour and measured at one meter from the patient or the human research subject, the survey instrument used, and the initials of the individual who made the survey.

R313-32-406. Brachytherapy Sources Inventory.

(1) Promptly after removing them from a patient or a human research subject, a licensee shall return brachytherapy sources to the storage area, and count the number returned to ensure that all sources taken from the storage area have been returned.

(2) A licensee shall make a record of brachytherapy source use which shall include:

(a) the names of the individuals permitted to handle the sources;

(b) the number and activity of sources removed from storage, the patient's or the human research subject's name and room number, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage; and

(c) the number and activity of sources returned to storage, the patient's or the human research subject's name and room number, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(3) Immediately after implanting sources in a patient or a human research subject the licensee shall make a radiation survey of the patient or the human research subject and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(4) A licensee shall retain the records required in R313-32-406(2) and (3) for three years.

R313-32-410. Safety Instruction.

(1) The licensee shall provide radiation safety instruction to all personnel caring for the patient or the human research subject undergoing implant therapy. To satisfy this requirement, the instruction shall describe:

(a) size and appearance of the brachytherapy sources;

(b) safe handling and shielding instructions in case of a dislodged source;

(c) procedures for patient or human research subject control;

(d) procedures for visitor control; and

(e) procedures for notification of the Radiation Safety Officer if the patient or the human research subject dies or has a medical emergency.

(2) A licensee shall retain for three years a record of individuals receiving instruction required by R313-32-410(1), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-415. Safety Precautions.

(1) For each patient or human research subject receiving implant therapy and not released from licensee control pursuant to R313-32-75, a licensee shall:

(a) not quarter the patient or the human research subject in the same room with an individual who is not receiving radiation therapy;

(b) post the patient's or human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(c) authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) promptly after implanting the material, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of R313-15, and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in microsieverts or millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey; and

(e) provide the patient or the human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the individual if the individual was administered a permanent implant.

(2) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

R313-32-420. Possession of Survey Instrument.

A licensee authorized to use radioactive material for implant therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-500. Use of Sealed Sources for Diagnosis.

A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) iodine-125, americium-241, or gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(2) iodine-125 as a sealed source in a portable imaging device.

R313-32-520. Availability of Survey Instrument.

A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv per hour to (100 mrem) per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour. The instrument shall be calibrated in accordance with R313-32-51.

R313-32-600. Use of a Sealed Source in a Teletherapy Unit.

The rules and provisions of R313-32-600 through R313-32-647 govern the use of teletherapy units for medical use that contain a sealed source of cobalt-60 or cesium-137.

R313-32-605. Maintenance and Repair Restrictions.

Only a person specifically licensed by the Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State to perform teletherapy unit maintenance and repair shall:

(1) install, relocate, or remove a teletherapy sealed source or a teletherapy unit that contains a sealed source; or

(2) maintain, adjust, or repair the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, or result in increased radiation levels.

R313-32-606. License Amendments.

In addition to the changes specified in R313-32-13, a licensee shall apply for and shall receive a license amendment before:

(1) making any change in the treatment room shielding;

(2) making any change in the location of the teletherapy unit within the treatment room;

(3) using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;

(4) relocating the teletherapy unit; or

(5) allowing an individual not listed on the licensee's license to perform the duties of the teletherapy physicist.

R313-32-610. Safety Instruction.

(1) A licensee shall post instructions at the teletherapy unit console. To satisfy this requirement, these instructions shall inform the operator of:

(a) the procedure to be followed to ensure that only the patient or the human research subject is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption; and

(b) the procedure to be followed if:

(i) the operator is unable to turn the primary beam of radiation off with controls outside the treatment room or any other abnormal operation occurs; and

(ii) the names and telephone numbers of the authorized users and Radiation Safety Officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(2) A licensee shall provide instruction in the topics identified in R313-32-610(1) to individuals who operate a teletherapy unit.

(3) A licensee shall retain for three years a record of individuals receiving instruction required by R313-32-610(2), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-615. Safety Precautions.

(1) A licensee shall control access to the teletherapy room by a door at each entrance.

(2) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that will:

(a) prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(b) turn the primary beam of radiation off immediately when an entrance door is opened; and

(c) prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(3) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(4) A licensee shall install in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(a) A radiation monitor shall provide visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source, and shall be observable by an individual entering the teletherapy room.

(b) A radiation monitor shall be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system.

(c) A radiation monitor shall be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients or human research subjects.

(d) A licensee shall maintain a record of the check required by R313-32-615(4)(c) for three years. The record shall include the date of the check, notation that the monitor indicates when its detector is and is not exposed, and the initials of the individual who performed the check.

(e) If a radiation monitor is inoperable, the licensee shall require individuals entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in R313-32-615(4)(d).

(f) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(5) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient or the human research subject from the teletherapy unit console during irradiation.

R313-32-620. Possession of Survey Instrument.

A licensee authorized to use radioactive material in a teletherapy unit shall have in its possession either a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-630. Dosimetry Equipment.

(1) A licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions shall be met:

(a) The system shall be calibrated by the National Institute of Standards and Technology or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two years and after any servicing that may have affected system calibration.

(b) The system shall have been calibrated within the previous four years; eighteen to thirty months after that calibration, the system shall have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past twenty-four months by the National Bureau of Standards or by a calibration laboratory accredited by the AAPM. The intercomparison meeting shall be sanctioned by a calibration laboratory or radiologic physics center accredited by the AAPM. The results of the intercomparison meeting shall have indicated that the calibration factor of the licensee's system had not changed by more than two percent. The licensee shall not use the

intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating cobalt-60 teletherapy units, the licensee shall use a teletherapy unit with a cobalt-60 source. When intercomparing dosimetry systems to be used for calibrating cesium-137 teletherapy units, the licensee shall use a teletherapy unit with a cesium-137 source.

(2) The licensee shall have available for use a dosimetry system for spot-check measurements. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with R313-32-630(1). This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in R313-32-630(1).

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by R313-32-630(1) and (2), the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

R313-32-632. Full Calibration Measurements.

(1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) before the first medical use of the unit; and

(b) before medical use under the following conditions:

(i) whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the source or following reinstallation of the teletherapy unit in a new location; or

(iii) following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) at intervals not exceeding one year.

(2) To satisfy the requirement of R313-32-632(1), full calibration measurements shall include determination of:

(a) the output within plus or minus three percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) the uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) timer constancy and linearity over the range of use;

(e) on-off error; and

(f) the accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in R313-32-630(1) to measure the output for one set of exposure conditions. The remaining radiation measurements required in R313-32-632(2)(a) may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by R313-32-632(1) in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine that are described in Physics in Medicine and Biology Vol. 16, No. 3, 1971, pp. 379-396, or by Task Group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in Medical Physics Vol. 10, No. 6, 1983, pp. 741-711, and Vol. 11, No. 2, 1984, p. 213.

(5) A licensee shall correct mathematically the outputs determined in R313-32-632(2)(a) for physical decay for intervals not exceeding one month for cobalt-60 or six months for cesium-137.

(6) Full calibration measurement required in R313-32-632(1) and physical decay corrections required by R313-32-632(5) shall be performed by the licensee teletherapy physicist.

(7) A licensee shall retain a record of each calibration for the duration of the teletherapy unit source. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, an assessment of timer linearity and constancy, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, and the signature of the teletherapy physicist.

R313-32-634. Periodic Spot-Checks.

(1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:

(a) timer constancy, and timer linearity over the range of use;

(b) on-off error;

(c) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(d) the accuracy of all distance measuring and localization devices used for medical use;

(e) the output for one typical set of operating conditions measured with the dosimetry system described in R313-32-630(2); and

(f) the difference between the measurement made in R313-32-634(2)(e) and the anticipated output, expressed as a percentage of the anticipated output (the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by R313-32-634(1) in accordance with procedures established by the teletherapy physicist. That individual need not actually perform the spot-check measurements.

(3) A licensee shall have the teletherapy physicist review the results of each spot-check within 15 days. The teletherapy physicist shall promptly notify the licensee in writing of the results of each spot-check. The licensee shall keep a copy of each written notification for three years.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks for each teletherapy facility once in each calendar month that assure proper operation of:

(a) electrical interlocks at each teletherapy room entrance;

(b) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(c) beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) viewing systems;

(e) treatment room doors from inside and outside the treatment room; and

(f) electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) A licensee shall arrange for prompt repair of any system identified in R313-32-634(4) that is not operating properly, and shall not use the teletherapy unit following door interlock malfunction until the interlock system has been repaired.

(6) A licensee shall retain a record of each spot-check required by R313-32-634(1) and (4) for three years. The record shall include the date of the spot-check, the manufacturer's name, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, an assessment of linearity and constancy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the calculated on-off error, the determined accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot-check.

R313-32-636. Safety Checks for Teletherapy Facilities.

(1) A licensee shall promptly check all systems listed in R313-32-634(4) for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by R313-32-606(1) through (4).

(2) If the results of the checks required in R313-32-636(1) indicate the malfunction of a system specified in R313-32-634(4), the licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(3) A licensee shall retain for three years a record of the facility checks following installation of a source. The record shall include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors, and the signature of the Radiation Safety Officer.

R313-32-641. Radiation Surveys for Teletherapy Facilities.

(1) Before medical use, after each installation of a teletherapy source, and after making any change for which an amendment is required by R313-32-606(1) through (4), the licensee shall perform radiation surveys with a portable radiation measurement survey instrument calibrated in accordance with R313-32-51 to verify that:

(a) the maximum and average dose rates at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 100 uSv (ten mrem) per hour and 20 uSv (two mrem) per hour, respectively;

(b) with the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of the radiation, that:

(i) radiation dose quantities per unit time in restricted areas are not likely to cause personnel exposures in excess of the limits specified in R313-15-201; and

(ii) radiation dose quantities per unit time in unrestricted areas do not exceed the limits specified in R313-15-301.

(2) If the results of the surveys required in R313-32-641(1) indicate any radiation dose quantity per unit time in excess of the respective limit specified in R313-32-641(1), the licensee shall lock the control in the off position and not use the unit:

(a) except as may be necessary to repair, replace, or test the teletherapy unit shielding or the treatment room shielding; or

(b) until the licensee has received a specific exemption pursuant to R313-12-54.

(3) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record shall include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in microseverts or millirem per hour, the calculated maximum quantity of radiation over a period of one week for each restricted and unrestricted area, and the signature of the Radiation Safety Officer.

R313-32-643. Modification of Teletherapy Unit or Room Before Beginning a Treatment Program.

(1) If the survey required by R313-32-641 indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by R313-15-301, before beginning the treatment program the licensee shall:

(a) either equip the unit with stops or add additional radiation shielding to ensure compliance with R313-15-301(3);

(b) perform the survey required by R313-32-641 again; and

(c) include in the report required by R313-32-645 the results of the initial survey, a description of the modification

made to comply with R313-32-643(1)(a), and the results of the second survey.

(2) As an alternative to the requirements set out in R313-32-643(1), a licensee may request a license amendment under R313-15-301(3) that authorizes radiation levels in unrestricted areas greater than those permitted by R313-15-301(1). A licensee shall not begin the treatment program until the license amendment has been issued.

R313-32-645. Reports of Teletherapy Surveys, Checks, Tests and Measurements.

A licensee shall mail a copy of the records required in R313-32-636, R313-32-641, R313-32-643, and the output from the teletherapy source expressed as coulombs/kilogram (roentgens) or gray (rad) per hour at one meter from the source and determined during the full calibration required in R313-32-632 to the Executive Secretary within thirty days following completion of the action that initiated the record requirement.

R313-32-647. Five-Year Inspection.

(1) A licensee shall have each teletherapy unit fully inspected and serviced during teletherapy source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing shall only be performed by persons specifically licensed to do so by the Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State.

(3) A licensee shall keep a record of the inspection and servicing for the duration of the license. The record shall contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector.

R313-32-900. Radiation Safety Officer.

Except as provided in R313-32-901, the licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer as provided in R313-32-21 to be an individual who:

(1) is certified by:

(a) American Board of Health Physics in comprehensive health physics;

(b) American Board of Radiology;

(c) American Board of Nuclear Medicine;

(d) American Board of Science in nuclear medicine;

(e) Board of Pharmaceutical Specialties in nuclear pharmacy;

(f) American Board of Medical Physics in radiation oncology physics;

(g) Royal College of Physicians and Surgeons of Canada in nuclear medicine;

(h) American Osteopathic Board of Radiology; or

(i) American Osteopathic Board of Nuclear Medicine; or

(2) has had classroom and laboratory training and experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiopharmaceutical chemistry; and

(b) one year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the Radiation Safety Officer on a license issued by the Executive Secretary, Nuclear Regulatory Commission or Agreement State license that authorizes the medical use of radioactive material; or

(3) be an authorized user identified on the licensee's license.

R313-32-901. Training for Experienced Radiation Safety Officer.

An individual identified as a Radiation Safety Officer on a license issued by the Executive Secretary, Nuclear Regulatory Commission or Agreement State before January 1, 1989, need not comply with the training requirements of R313-32-900.

R313-32-910. Training for Uptake, Dilution, and Excretion Studies.

Except as provided in R313-32-970 and R313-32-971, the licensee shall require the authorized user of a radiopharmaceutical in R313-32-100(1) to be a physician who:

(1) is certified in:

(a) nuclear medicine by the American Board of Nuclear Medicine;

(b) diagnostic radiology by the American Board of Radiology;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(e) American Osteopathic Board of Nuclear Medicine in nuclear medicine; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:

(a) 40 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiopharmaceutical chemistry; and

(b) 20 hours of supervised clinical experience under the supervision of an authorized user and that includes:

(i) examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) administering dosages to patients or human research

subjects and using syringe radiation shields;

(iv) collaborating with the authorized user in the interpretation of radionuclide test results; and

(v) patient or human research subject follow-up; or

(3) has successfully completed a six-month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in the topics identified in R313-32-910(2).

R313-32-920. Training for Imaging and Localization Studies.

Except as provided in R313-32-970 or R313-32-971, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit in R313-32-200(1) to be a physician who:

(1) is certified in:

(a) nuclear medicine by the American Board of Nuclear Medicine;

(b) diagnostic radiology by the American Board of Radiology;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(e) American Osteopathic Board of Nuclear Medicine in nuclear medicine; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiopharmaceutical chemistry; and

(v) radiation biology; and

(b) 500 hours of supervised work experience under the supervision of an authorized user that includes:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(iii) calculating and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent the misadministration of radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) eluting technetium-99m from generator systems, measuring and testing the elute for molybdenum-99 and alumina contamination, and processing the elute with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and

(c) 500 hours of supervised clinical experience under the supervision of the authorized user that includes:

(i) examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) administering dosages to patients or human research subjects and using syringe radiation shields;

(iv) collaborating with the authorized user in the interpretation of radioisotope test results; and

(v) patient or human research subject follow-up; or

(3) has successfully completed a six-month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in the topics identified in R313-32-920(2).

R313-32-930. Training for Therapeutic Use of Unsealed Radioactive Material.

Except as provided in R313-32-970, the licensee shall require the authorized user of radiopharmaceuticals in R313-32-300 to be a physician who:

(1) is certified by:

(a) the American Board of Nuclear Medicine;

(b) the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;

(c) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(d) the American Osteopathic Board of Radiology after 1984; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

(a) 80 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology; and

(b) supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

(i) use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals; and

(ii) use of iodine-131 for treatment of thyroid carcinoma in three individuals.

R313-32-932. Training for Treatment of Hyperthyroidism.

Except as provided in R313-32-970, the licensee shall require the authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten individuals.

R313-32-934. Training for Treatment of Thyroid Carcinoma.

Except as provided in R313-32-970, the licensee shall require the authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three individuals.

R313-32-940. Training for Use of Brachytherapy Sources.

Except as provided in R313-32-970 the licensee shall require the authorized user of a brachytherapy source listed in R313-32-400 for therapy to be a physician who:

(1) is certified in:

(a) radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) radiation oncology by the American Osteopathic Board of Radiology;

(c) radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology;

(b) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) checking survey meters for proper operation;

(iii) preparing, implanting, and removing sealed sources;

(iv) maintaining running inventories of material on hand;

(v) using administrative controls to prevent the misadministration of radioactive material; and

(vi) using emergency procedures to control radioactive material; and

(c) three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

(ii) selecting the proper brachytherapy sources and dose and method of administration;

(iii) calculating the dose; and

(iv) post-administration follow-up and review of case histories in collaboration with the authorized user.

R313-32-941. Training for Ophthalmic Use of Strontium-90.

Except as provided in R313-32-970, the licensee shall require the authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(1) 24 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology.

(2) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

(a) examination of each individual to be treated;

(b) calculation of the dose to be administered;

(c) administration of the dose; and

(d) follow-up and review of each individual's case history.

R313-32-950. Training for Use of Sealed Sources for Diagnosis.

Except as provided in R313-32-970, the licensee shall require the authorized user of a sealed source in a device listed in R313-32-500 to be a physician, dentist, or podiatrist who:

(1) is certified in

(a) radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) nuclear medicine by the American Board of Nuclear Medicine;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) has had eight hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

(a) radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(b) radiation biology;

(c) radiation protection; and

(d) training in the use of the device for the uses requested.

R313-32-960. Training for Teletherapy.

Except as provided in R313-32-970, the licensee shall require the authorized user of a sealed source listed in R313-32-600 in a teletherapy unit to be a physician who:

(1) is certified in:

(a) radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) radiation oncology by the American Osteopathic Board of Radiology;

(c) radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology;

(b) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) review of the full calibration measurements and periodic spot checks;

(ii) preparing treatment plans and calculating treatment times;

(iii) using administrative controls to prevent misadministrations;

(iv) implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(v) checking and using survey meters; and

(c) three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(ii) selecting the proper dose and how it is to be administered;

(iii) calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

(iv) post-administration follow-up and review of case histories.

R313-32-961. Training for Teletherapy Physicist.

The licensee shall require the teletherapy physicist to be an individual who:

(1) is certified by the American Board of Radiology in:

(a) therapeutic radiological physics;

(b) roentgen ray and gamma ray physics;

(c) x-ray and radium physics; or

(d) radiological physics; or

(2) is certified by the American Board of Medical Physics in radiation oncology physics; or

(3) holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a teletherapy physicist at a medical institution that includes the tasks listed in R313-32-59, R313-32-632, R313-32-634 and R313-32-641.

R313-32-970. Training for Experienced Authorized Users.

Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of radioactive material on a license issued by the Executive Secretary, Nuclear Regulatory Commission, or Agreement State license issued before January 1, 1989, who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of R313-32-900 to R313-32-961.

R313-32-971. Physician Training in a Three Month Program.

A physician who, before October 1, 1988, began a three month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program need not comply with the requirements of R313-32-910 or R313-32-920.

R313-32-972. Recentness of Training.

The training and experience specified in R313-32-900 through R313-32-981 shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R313-32-980. Training for an Authorized Nuclear

Pharmacist.

The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties, or

(2)(a) has completed 700 hours in a structured educational program consisting of both:

(i) didactic training in the following areas:

(A) radiation physics and instrumentation;

(B) radiation protection;

(C) mathematics pertaining to the use and measurement of radioactivity;

(D) chemistry of radioactive material for medical use; and

(E) radiation biology; and

(ii) supervised experience in a nuclear pharmacy involving the following:

(A) shipping, receiving, and performing related radiation surveys;

(B) using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(C) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(D) using administrative controls to avoid mistakes in the administration of radioactive material;

(E) using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(b) has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

R313-32-981. Training for Experienced Nuclear Pharmacists.

A licensee may apply for and must receive a license amendment identifying an experienced nuclear pharmacist as an authorized nuclear pharmacist before it allows this individual to work as an authorized nuclear pharmacist. A pharmacist who has completed a structured educational program as specified in R313-32-980(2)(a) before January 1, 1998 and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist need not comply with the requirements on preceptor statement (See R313-32-980(2)(b)) and recentness of training (See R313-32-972) to qualify as an authorized nuclear pharmacist.

R313-32-999. Resolution of Conflicting Requirements During Transition Period.

If the rules in R313-32 conflict with the licensee's radiation safety program as identified in its license, and if that license was approved by the Bureau of Radiation Control, Department of Health, before January 1, 1989, and has not been renewed since January 1, 1989, then the requirements in the license will apply. However, if the licensee exercises its privilege to make minor changes in its radiation safety procedures that are not potentially important to safety under R313-32-31, the portion changed shall comply with the requirements of R313-32. At the time of license renewal and thereafter, these amendments to R313-32 shall apply.

KEY: radioactive material, radiopharmaceutical, brachytherapy, nuclear medicine

August 11, 1998 19-3-104

Notice of Continuation May 1, 1997 19-3-108

R396. Health, Family Health Services, Child Health.
R396-100. Immunization Rule for Students.
R396-100-1. Purpose and Authority.

(1) This rule prescribes the:

(a) immunizations required for attendance at a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family care home, or Headstart program in this state;

(b) required doses and frequency of vaccine administration;

(c) reporting of statistical data; and

(d) time periods for conditional enrollment.

(2) This rule is required by Section 53A-11-303 and authorized by Section 53A-11-306.

R396-100-2. Definitions.

(1) "Conditional enrollment" means enrollment according to the provisions of R396-100-6.

(2) "Department" means the Utah Department of Health.

(3) "Exemption" means a relief from the statutory immunization requirements by reason of qualifying under Sections 53A-11-302 and 302.5.

(4) "Parent" means a biological or adoptive parent who has legal custody of a child, a legal guardian, or a legal age brother or sister of a student who is without a parent or guardian, or a student, if of legal age.

(5) "School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family care home, or Headstart program

(6) "School entry" means a student, at any grade, entering a Utah school for the first time.

(7) "School official" means a director, superintendent, principal, operator, or his designee.

(8) "Student" means an individual enrolled in a school as defined in R396-100-2(5).

R396-100-3. Required Immunizations.

(1) To attend a Utah school, a student must meet the minimum immunization requirements of Sections R396-100-4, 5, 6, 7, 8, and 9.

(2) Persons administering vaccines shall administer them according to the route, dosage, and site recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices, the American Academy of Pediatrics, or the American Academy of Family Physicians.

(a) If a student received a dose of vaccine at less than the recommended age, less than the minimum interval between doses, or less than the recommended dosage, the vaccination must be repeated at the correct interval and dose.

(b) Doses of measles, mumps and rubella vaccines must be repeated if administered before a student's first birthday.

(c) If doses of vaccine are received in a series with a longer interval between doses than recommended, additional doses are not required.

(3) All vaccines required by this rule may be administered alone, or in combination, or concurrently with all other vaccines required by this rule.

R396-100-4. Required Immunizations for Diphtheria, Tetanus, and Pertussis Vaccines.

A student must be immunized for diphtheria, tetanus, and pertussis according to the applicable schedule of the following three schedules:

(1) Schedule No. 1. A student under seven years of age must receive four doses of diphtheria, tetanus and acellular pertussis (DTaP), or diphtheria, tetanus, whole-cell pertussis (DTP), or pediatric diphtheria, tetanus (DT) vaccines. Administer the first three doses a minimum of one month apart, the fourth dose six months or more after the third dose. If a student started the series late, an interval of four months between the third and fourth doses is acceptable. If the fourth dose is administered before a student's fourth birthday, a fifth dose of DTaP, DTP or DT is required before a student enters kindergarten, or first grade if a student did not attend kindergarten.

(2) Schedule No. 2. A student who is seven or older and who has not completed the series must receive three doses of adult Tetanus, diphtheria (Td). The first two doses must be administered a minimum of one month apart and the third dose six months after receiving the second dose. If the series was started before the student's seventh birthday with DTaP, DTP, or DT, they may be counted toward the three-dose series of Td.

(3) Schedule No. 3. A student who is seven and who has not received any of the tetanus or diphtheria vaccines must receive three doses of adult Td. The first dose must be administered before school entry and the second dose at a minimum of one month, but not more than two months after receiving the first dose. The third dose must be administered six months after the second dose.

R396-100-5. Required Immunizations for Poliomyelitis (Polio).

A student must be immunized for Poliomyelitis (polio) according to one of the following three schedules:

(1) Schedule No. 1. A student must receive sequential administration of two doses of inactivated polio vaccine (IPV) followed by 2 doses of live oral polio vaccine (OPV) for a total of four doses. The first three doses, two IPV and one OPV, must be administered a minimum of one month apart. The second dose of OPV must be administered according to the following three conditions:

(a) on or after a student's fourth birthday;

(b) a minimum of one month after receiving the first dose of OPV;

(c) before a student enters kindergarten, or first grade if a student did not attend kindergarten.

(2) Schedule No. 2(a). A student must receive four doses of OPV. The first three doses must be administered a minimum of one month apart. The fourth dose of OPV must be administered according to the following four conditions:

(i) on or after a student's fourth birthday;

(ii) a minimum of one month after receiving the third dose of OPV;

(iii) before a student enters kindergarten, or first grade if a student did not attend kindergarten; and

(b) If the third dose of OPV is administered on or after a student's fourth birthday, the fourth dose of OPV is not required

(3) Schedule No. 3(a). A student must receive four doses of IPV. The first three doses must be administered a minimum of one month apart. The fourth dose of IPV must be administered according to the following four conditions:

(i) on or after a student's fourth birthday;

(ii) a minimum of one month after receiving the third dose of IPV;

(iii) before a student enters kindergarten, or first grade if a student did not attend kindergarten; and

(b) if the third dose of IPV is administered on or after a student's fourth birthday, the fourth dose of IPV is not required

R396-100-6. Required Immunizations for Measles.

(1) A student must be immunized for Measles by receiving two doses of measles-containing vaccine. The first dose must be administered on or after the student's first birthday. The second dose must be administered before the student enters kindergarten, or first grade if the student did not attend kindergarten. The interval between doses one and two is a minimum of one month.

(a) If the student received the first dose of measles-containing vaccine less than one month before school entry into any grade, kindergarten through twelfth, the second dose of measles-containing vaccine must be administered at a minimum of one month, but not more than two months after receiving the first dose.

(b) A student one year of age or older entering school must have received one dose of measles-containing vaccine before school entry.

(2) After July 1, 1999, a student attending a school at any grade, kindergarten through twelfth grade, shall provide written documentation of receiving a second dose of measles-containing vaccine before school entry, if previous documentation has not been provided. The minimum interval between the first and second doses is one month.

R396-100-7. Required Immunizations for Mumps and Rubella.

(1) A student must be immunized for mumps by receiving one dose of mumps-containing vaccine on or after the student's first birthday.

(2) A student must be immunized for Rubella by receiving one dose of rubella-containing vaccine on or after the student's first birthday.

R396-100-8. Required Immunizations for Haemophilus Influenza Type b (Hib).

(1) A student must be immunized for Haemophilus influenza type b (Hib) if the student attends a Utah school before his fifth birthday. Although the schedules and number of doses recommended by the manufacturers vary, the minimum required doses of Hib vaccine necessary for compliance is dependent on a student's current age and does not depend on the prior number of Hib vaccine doses received.

(a) For a student less than 12 months of age, a minimum of two doses is required. An additional dose is required on or after the first birthday.

(b) For a student 12 through 14 months of age, a minimum of two doses is required, with at least one of the two doses required on or after the first birthday.

(c) For a student 15 months through four years of age, and only one dose is required, but only if one dose was given after the first birthday. If the student did not receive one dose after the first birthday, the student must receive one dose to be in compliance with this rule.

(2) The recommended interval between Hib doses is two months. A one-month interval is also acceptable.

(3) Hib vaccine is not required nor recommended after a student's fifth birthday.

R396-100-9. Required Immunizations for Hepatitis B.

After July 1,1999, a student enrolling for the first time at a Utah school, except for a student in first grade or above, shall provide written documentation of receiving three doses of hepatitis B vaccine. The first two doses must be administered a minimum of one month apart. The third dose must be administered according to the following three conditions:

(1) a minimum of two months after receiving the second dose;

(2) the minimum interval between doses one and three is four months;

(3) the student is a minimum of six months of age.

R396-100-10. Official Utah School Immunization Record.

(1) The Department shall provide the official Utah School Immunization Record forms to all schools, private physicians, child care facilities, and local health departments.

(2) A school official shall accept any immunization record provided by a licensed physician, registered nurse, or public health official as certification of immunization, and shall transfer this information to the Utah School Immunization Record with the following information:

(a) name of student;

(b) student's birth date;

(c) type of vaccine administered;

(d) minimally the month and year each dose was administered; however, the month, day and year are required for the first dose of measles, mumps and rubella vaccine.

(3) A parent claiming an exemption to immunization, as allowed by Section 53A-11-302, shall provide to a school official the Utah School Immunization Record with the required signatures and completion of the exemption information on the back of the School Immunization Record, with the appropriate signatures. If an exemption is claimed for personal beliefs, a parent shall also provide to a school official, a Personal Exemption Form, as required by Section 53A-11-302.5.

(a) A parent shall fill in the required information on the Personal Exemption Form and sign in the presence of a representative of the local health department in the county where the student resides.

(b) The health department representative shall witness and sign the Personal Exemption Form and attach the Exemption Form to the Utah School Immunization Record.

(4) A school official shall maintain a file of the Utah School Immunization Record for each student in all grades and a Utah Department of Health Personal Exemption Form for each student in all grades claiming a personal exemption. A school official shall return the Utah School Immunization Record and

the Personal Exemption Form to the parent of a student when the student withdraws, transfers, is promoted, or otherwise leaves the school. As an alternative, a school official may transfer the School Immunization Record and the Personal Exemption Form with a student's official school record to the new school.

(5) A representative of the Department or the local health department may examine, audit, and verify immunization records maintained by a school official.

(6)(a) For all students under a school official's jurisdiction, the school official shall provide to the Department's Immunization Program:

(i) by November 30 of each year, a written statistical report of the immunization status of students enrolled in a licensed day care center, Headstart program, and kindergarten or first grade if the student did not attend kindergarten;

(ii) by November 30 of each year, commencing 1999, a written statistical report of the two-dose measles immunization status of all kindergarten through twelfth grade students.

(iii) by January 31 of each year, a written statistical report of the immunization status of all transfer students.

(b) the Department shall prescribe the information needed and the format for the reports.

R396-100-11. Conditional Enrollment and Exclusion.

A school may conditionally enroll a student who is not completely immunized against each specific disease as required in this rule if the student has received at least one dose of each specific vaccine required by this rule for his age. To remain in school, the student must complete the required subsequent doses in each vaccine series on schedule and provide written documentation to the school official.

(1) A school official shall review the immunization status of a conditionally enrolled student every 60 days to ensure continued compliance in completing the required doses of vaccines. If the student has not received a subsequent dose or immunization within one month of the first date that the subsequent dose or immunization can be administered, the student is not in compliance and the school must exclude the student from school attendance.

(2) A student's exclusion from school attendance begins five days after the conditional enrollment period expires. Within these five days, a school official shall mail to the last-known address of the student's parent or guardian, a written notice of the student's pending exclusion from school and of a parent's right to claim an exemption to immunization.

R396-100-12. Notification to Parents.

(1) If a school official has not received a student's School Immunization Record or Certificate of Personal Exemption one month before the start of the school year, the school official shall notify the parent by mail, telephone, or in person that:

(a) The school official does not have a completed Utah School Immunization Record or Certificate of Personal Exemption for an enrolling student.

(b) A school official cannot admit a student without proof of complete immunizations, or evidence that a student qualifies for conditional enrollment, or evidence that a student qualifies for an exemption on medical, personal, or religious grounds.

(c) Immunizations and documentation are available from a licensed medical doctor (M.D.), doctor of osteopathy (D.O.), public health department, or any community clinic.

(2) A school official shall notify the parent of these requirements at the time of first registration.

R396-100-13. Exclusion of Students Who Are Under Exemption and Conditionally Enrolled Status.

(1) A local health officer, may exclude students who are under exemption and conditionally enrolled status from school attendance if there is good cause to believe that a student:

(a) attending school under an exemption or conditional enrollment has a vaccine-preventable disease;

(b) has been exposed to a vaccine-preventable disease;

(c) will be exposed to a vaccine-preventable disease as a result of school attendance.

(2) A student shall not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.

R396-100-14. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section 26-23-6. A violation is punishable as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil penalty of up to $5,000 for each violation.

KEY: immunization, rules and procedures
August 12, 1998 53A-11-303

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-4. General Certificate Provisions.
R430-4-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-4-2. Purpose.

This rule defines the standards that a residential in-home child care provider must follow to obtain a certificate.

R430-4-3. Initial Application.

(1) An applicant for a certificate shall file a Request for Agency Action - Certificate Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, sanitation, building and licensing laws, regulations and ordinances, and codes of the city, county, municipality in which the home is located.

(3) The applicant shall obtain the following documents to submit with the application:

(a) Five hours of department-approved training in child care;

(b) CPR and First Aid certificates; and

(c) Background clearance documents as required in R430-6.

R430-4-4. Certificate Fee.

The residential provider shall submit a certificate fee established in accordance with 26-1-6 and 26-39-105.5(1)(b)(i)(B) with the completed application form.

R430-4-5. Initial Certificate Issuance or Denial.

(1) The Department shall render a decision on an initial certificate application within 60 days of receipt of a completed application packet or the Department shall deny an application not completed within six months of the submission date of the first component of an application packet.

(2) Upon verification of compliance with certificate requirements the Department shall issue a Notice of Agency Action - Letter of Certificate for a period not to exceed one year.

(3) If the Department denies a Request for Agency Action-Certificate Application, the Department shall issue a written Notice of Agency Decision. An applicant who was denied a certificate may reapply for a certificate as a new applicant and must initiate a new request for agency action.

R430-4-6. Letter of Certificate Provisions.

The Letter of Certificate is not assignable or transferable and the residential provider shall make the letter available to the public upon request.

R430-4-7. Expiration and Renewal of Certificate.

(1) Each Letter of Certificate shall expire at midnight, on the last day of the month, 12 months from the anniversary date of the prior Letter of Certificate, unless previously revoked by the Department.

(2) The Residential child care provider shall file a Request for Agency Action - Certificate Application form, applicable fees, and clearances to the Department 30 days prior to the current certificate expiration.

(3) The Department shall renew the Letter of Certificate upon verification that the provider is in compliance with all applicable rules.

(4) The Department shall not renew a Letter of Certificate for a residential child care facility who is no longer providing child care.

R430-4-8. Notice of Intent to Inspect.

When the Department issues the initial Letter of Certificate or the renewal Letter of Certificate the residential provider will be informed of the requirement for initial inspection and that the owner will receive a notice prior to the actual inspection.

R430-4-9. Inspections and Enforcement.

(1) Each residential certificate child care provider shall receive at least one annual on-site inspection.

(2) If a serious sanitation, fire or health hazards has been found during an inspection, the Department may, at the option of the residential certificate provider:

(a) Require a corrective action plan for the serious hazards found and make an unannounced follow up inspection to determine compliance; or

(b) Inform the parent's of each child in the care of the provider of the results of the Department's inspection and the failure of the provider to take corrective action.

R430-4-10. Sanction Action on Certificate.

The Department may revoke a certificate if the provider exhibits evidence of aiding, abetting, or permitting the commission of any illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the children in care.

KEY: child care facilities
August 20, 1998 **26-39**

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-6. Background Screening.
R430-6-1. Authority.

(1) The Utah Code, Section 26-39-107, requires that a Bureau of Criminal Identification screening, referred to as BCI, screening be conducted on each person requesting to be licensed or residential certificate or to renew a license or certificate for existing, new, and proposed owners, directors, members of the governing body, employees, providers of care and volunteers, except parents of children enrolled in the child care program.

(2) The Utah Code, Section 26-39-104, requires the Department to make and enforce rules to protect children's common needs for a safe and healthy environment and provide for competent care givers. The Department shall review the management information system for licensing and certification purposes pursuant to 62A-4a-116 to screen for individuals who may have a substantiated finding of abuse or neglect since January 1, 1988, unless removed pursuant to Susbsection 62A-4a-116.5.

R430-6-2. Purpose.

The purpose of the screening process using the BCI criminal background and child and adult management information system is to protect children receiving services in a child day care program. The BCI screening process determines whether a covered individual has been convicted of any crime. In addition, the Department screens all individuals using the management information system which is limited to:

1. Substantiated findings of abuse or neglect since January 1, 1988, unless removed pursuant to Subsection 62A-4a-116.5(6);

2. An adjudication of child abuse or neglect by a court of competent jurisdiction; and

3. Any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person.

R430-6-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Covered Individual" means all proposed employees of a child care facility, including owners, volunteers (excluding parents), existing employees, members of governing bodies, and, for family care settings, all individuals residing in the home where a child care programs is to be licensed, who are 18 years old and over.

(2) "Department" means the Utah Department of Health.

(3) "Substantiated" means a finding by the Department of Human Services, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of abuse or neglect has occurred:

(a) physical abuse;

(b) sexual abuse;

(c) sexual exploitation;

(d) abandonment;

(e) medical neglect resulting in death, disability, or serious illness; or

(f) chronic or severe neglect.

R430-6-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-39-107, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, to be a residential certificate provider, or to renew a certificate or to be employed or volunteer in a licensed or residential certificate child care setting.

(a) Immediately upon or prior to employing or licensing or certifying a covered individual, the child care facility shall submit applicant information, fees and releases to the Department to allow the Department to perform a criminal background screening and child abuse screening.

(b) If a covered individual applicant has lived in Utah less that two years, or has unexplained gaps in work or residence record, the covered individual shall request a criminal background screening from the state or country of former residence. The covered individual shall submit the out-of-state criminal background screening within 90-days after application for review by the Department.

(c) If a covered individual has been serving a full-time religious mission out-of-state or has been in military service out-of-state for the immediate past two years, the covered individual shall submit to the Department a letter from their clergy or commanding officer documenting that the covered individual was not convicted of any felony or serious misdemeanor crimes during the time period of the religious or military service.

(2) If the BCI screening indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department. The Department shall submit them to the Criminal Investigations and Technical Services Division for additional screening.

(a) The fingerprint card that the covered individual submits shall be prepared either by the local law enforcement agency or an agency approved by local law enforcement.

(b) The Criminal Investigations and Technical Services Division, shall report the background screening and forward the fingerprint card to the Department. The Department shall review the criminal convictions within the past five years to determine whether to approve the covered individual for licensing, certification or employment.

(c) If based upon the BCI screening, the Department denies the covered individual a license or certificate, volunteer position or employment, the Department shall send a Notice of Agency Action to the child care provider or covered individual stating that the application is denied.

(3) The Department shall make the following determination if a covered individual has a criminal history record:

(a) If the covered individual was convicted of a felony, the covered individual may not provide child care, volunteer, or own or operate a child care program with a license or certificate issued by the Department.

(b) If the covered individual was convicted of a misdemeanor within the past five years, the covered individual may not provide child care, volunteer, or own or operate a child care program with a license or certificate issued by the Department if the misdemeanor involves offenses identified in the Utah Criminal Code as offenses against the family, offenses

against the person, pornography, prostitution, or any type of sexual offense.

(c) If the covered individual is a person with a felony or misdemeanor conviction who resides in a home where child care is provided, the Department shall not issue a license or certificate for day care in the home.

(4) The Executive Director may consider an approval for issuing a license, certificate, or employment of a covered individual who has been convicted of a misdemeanor but not a misdemeanor involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, according to the following criteria:

(a) If the convictions were older than five years, the covered individual may provide child care and operate a child care program with a license or certificate issued by the Department.

(b) If the convictions were within the last five years, the Department shall make a comprehensive review of the individual circumstances. If the Department finds that the covered individual's conduct is not adverse to the public health, morals, welfare, and safety of children, the covered individual may provide child care and operate a child care program with a license or certificate issued by the Department.

(c) If the convictions demonstrate a pattern of behavior which indicates that the covered individual's conduct is adverse to the public health, morals, welfare, and safety of children, the covered individual may not provide child care and operate a child care program with a license or certificate issued by the Department.

(5) The Department shall rely on the BCI as conclusive evidence of the conviction and the Department may revoke or deny a license, certificate and employment based on that evidence.

(6) If the covered individual is denied a license, certificate or employment based upon the BCI and the covered individual disagrees with the BCI report, the covered individual may seek redress through the Criminal Investigations and Technical Services Division, as provided in Section 77-18-2.

(7) All covered individuals shall report all felony and misdemeanor convictions of covered individuals for offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense to the Department within 48 hours of conviction.

R430-6-5. Child Abuse Management Information System.

(1) Pursuant to Utah Code Subsection 26-39-104(1)(a)(ii) the Department shall screen all covered individuals for a history of substantiated abuse, neglect, or exploitation from the management information system maintained by the Utah Department of Human Services (DHS).

(2) If a covered individual appears on the data base, the Department may deny or revoke a license, certificate or employment.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children being served in a licensed or certified child care setting, the Department shall not grant or renew a license, certificate or employment. The Department shall review the date of the substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(4) If the Department denies or revokes a license, certificate or employment based upon the child or adult abuse management information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of abuse, he must pursue an appeal with the DHS. If the covered individual agrees with the substantiated finding of abuse that was the basis of the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children being served in the licensed or residential certificate child care setting.

(b) The Department may hold the license, certificate or employment denial in abeyance until DHS renders a decision, if a covered individual appeals the record of substantiation.

(6) If the DHS determines a covered individual has a substantiated finding of abuse, neglect or exploitation after the Department issues a license, certificate or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license or certificate.

KEY: child care facilities
August 20, 1998 **26-39**

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-50. Residential Certificate Child Care Standards.
R430-50-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-50-2. Purpose.

This rule establishes standards to protect the health and safety of children who receive services from a residential certificate child care provider.

R430-50-3. Definition.

"Residential certificate child care" means:

(1) child care provided in the home of a provider for five to eight children, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation; or

(2) child care provided in the home of a provider for four or more children, based on the sum of the provider's own children under four years of age and other children under two years of age.

R430-50-4. Voluntary Certificate.

A provider of child care for four or fewer children in the providers home may request a residential certificate.

R430-50-5. Owner Qualifications.

(1) To be eligible for a residential certificate the owner must:

(a) be at least 18 years of age;

(b) have a current certification in basic first-aid and Cardiac Pulmonary Resuscitation (CPR). First-aid and CPR certification refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee can demonstrate to the Department to be equivalent; and

(c) meet at least one of the following:

(i) have a high school diploma or G.E.D.;

(ii) be an approved federal food program provider as of July 1, 1998; or

(iii) if (i) or (ii) cannot reasonably be met by the owner and an undue hardship is created, the owner may request a variance from the Department.

(2) The owner shall submit to the department at the time of initial application documentation that five hours of Department-approved training has been completed. Training will be Department-approved if it includes:

(a) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation;

(b) proper hand washing and sanitation techniques;

(c) recognizing early signs of illness and determining if there is a need to exclude a sick child from the home;

(d) accident prevention and safety principles;

(e) positive guidance for the management of children;

(f) child development;

(g) age appropriate activities for children; and

(h) If child care is provided to children under the age of two, the training must also include:

(i) Preventing Shaken Baby Syndrome;

(ii) Coping with crying babies; and

(iii) Preventing Sudden Infant Death Syndrome.

(3) The owner shall ensure that each care giver or volunteer who has direct contact with or access to children successfully completes the required five hours of department approved before starting assigned duties.

R430-50-6. Care Giver to Child Ratios.

The owner may not care for more than eight children.

R430-50-7. Child Discipline.

(1) The owner shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control. Discipline measures shall be explained to the child at the time the discipline is imposed and may include:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Care givers shall not do any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraining a child's movement by binding or tying;

(c) using abusive, demeaning or profane language;

(d) withdrawal of food or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area.

(4) "Time out" that enables the child to regain control of himself or herself and that keeps the child in visual contact with the care giver shall be used selectively, taking into account the child's developmental stage and the usefulness of "time out" for the individual child.

(5) For children 18 months and older "tantrums" shall be interrupted every three minutes until control is obtained.

R430-50-8. Records.

(1) The owner shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and day time phone number;

(c) name, address and phone number of at least one additional person to be notified in the event of an emergency if the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care;

(e) description of any allergies or special food needs; and

(f) immunization record.

(2) The owner shall obtain, in advance, from the parent or legal guardian the names, addresses and phone numbers of persons authorized to take the child from the residence.

(3) The owner shall maintain documentation that all individuals in the home over age 18 have been cleared by the Department for criminal convictions or substantiated findings of child abuse.

R430-50-9. Child Health and Medications.

(1) The owner shall inform the parents or guardians of all injuries and incidents that occur during the child's stay at the home. The owner shall immediately notify the parents or guardians if medical treatment is required.

(2) If an owner chooses to administer medications, then the over-the counter and prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have instructions for administration.

(a) The parent or guardian shall provide written permission for the administration of all medications.

(b) The owner shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(c) The owner shall ensure that all medications are secured from access to children. If medications are required to be refrigerated, then they shall be stored in spill-proof packaging.

(d) The owner will return all unused and out-of date medications to the parent or guardian.

(3) The owner may not admit or provide care to a child without proof of current immunizations, or evidence of conditional enrollment, or evidence of a personal, medical or religious exemption. Conditional enrollment means that the child has received at least one dose of each required vaccine prior to enrollment and be on a schedule for subsequent immunizations.

(4) The owner shall inform parents of communicable illnesses or parasites on the day of discovery.

(5) The owner shall ensure that the use of tobacco in any form, the use of alcohol, the ingestion of any substance (including prescription medications) in amounts known to compromise responsible judgement, and the use of or possession of illegal substances are prohibited by any person anywhere on the premises during the hours of operation when children are under care.

R430-50-10. Fire, Safety, and Sanitation.

(1) The owner shall have a disaster plan in case of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage to the facility or pose a health hazard. The owner shall also have an emergency plan in the case of a missing child, death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(a) A first aid kit shall be available in the home.

(b) The owner shall maintain an operating telephone in the home, unless there is a utility failure.

(c) The owner shall post the names and telephone numbers of the emergency medical personnel, fire department, police, and poison control by the telephone.

(2) The owner shall maintain fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits, leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit shall be present leading to an open space at ground level.

(3) Each home shall have an outdoor play space which is safe, free from hazards, located away from traffic or water hazards, and is available on the premises or is easily and safely accessible to the home. If a fence is required to protect children from any traffic or water hazards then the fence shall be at least four feet high. If local ordinances conflict, the owner may request a variance from the Department. Any gaps within the fence and the bottom edges of the fence shall not be more than three and one-half inches above the ground.

(4) If children are diapered at the home, then diapering shall occur in an area separate from food storage, food preparation, and eating area. A smooth nonabsorbent diaper changing surface and a sanitary container for soiled and wet diapers shall be available.

(5) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(6) Equipment and furniture must be durable, in good repair, structurally sound, and stable.

(7) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

(8) Electrical outlets accessible to children shall be protected or capped with safety devices.

(9) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(10) There shall be adequate housekeeping to maintain a clean and sanitary home, to control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(11) All care givers who prepare or serve food and snacks must have a food handlers permit.

(12) The owner shall ensure that there are no firearms or other weapons accessible to children during times children are one the premises. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area.

(13) If the owner has pets in the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available for all diseases transmissible to humans;

(c) the animals shall have no history of dangerous or aggressive behavior;

(d) the children shall not clean nor assist with the cleaning of animals, animal cages, pens or equipment;

(e) the animal cages and equipment shall not be cleaned in food preparation or food storage areas; and

(f) Children shall not be permitted to handle reptiles, including turtles and lizards.

(14) During all times that children are on the premises, the owner shall ensure that no sexually explicit materials are accessible to children or viewed by any person on the premises.

R430-50-11. Transportation.

Only the owner may transport children in non-public vehicles. Children must be transported in the following manner:

(1) The vehicle is licensed, registered and inspected.

(2) The owner has a current Utah driver's license.

(3) The vehicle and owner are insured.

(4) The vehicle is equipped with individual, size appropriate safety restraints.

KEY: child care facilities
August 20, 1998 26-39

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-90-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in licensed programs.

R430-90-3. Definitions.

(1) "Conditional enrollment" means that a child is admitted to a child care program and has received at least one dose of each required vaccine prior to enrollment and maintains a schedule for subsequent required vaccinations.

(2) "Direct Supervision" means that the care giver must be able to see and hear the children, and be near enough to intervene when needed.

(3) "Related children" means children whose child care is provided by their parents, legal guardians, grandparents, brothers, sisters, uncles or aunts.

R430-90-4. License Required.

(1) A person who provides child care in a home for nine to16 children not related to the licensee for less than 24 hours a day, with a regularly scheduled, on-going enrollment, for direct or in-direct compensation must be licensed as a family group child care program.

(2) A person who provides child care in a home for less than nine unrelated children for less than 24 hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation may be licensed as a family child care program.

R430-90-5. Licensee Qualifications and Duties.

(1) The licensee of the child care program must:

(a) be at least 18 years of age;

(b) have a high school diploma or G.E.D.; and

(c) have knowledge of and comply with applicable laws and rules.

(2) The licensee shall establish and implement policies and procedures for the health and safety of children in the home.

R430-90-6. Care Giver Qualifications.

(1) The licensee shall ensure that each care giver or volunteer who has direct contact with or access to children is oriented to the licensed program and successfully completes the required orientation training before starting assigned duties. The licensee shall document in a care giver personnel record the date of completion of orientation training. The orientation training must include:

(a) procedures for maintaining health and safety and handling emergencies and accidents;

(b) specific job responsibilities;

(c) child discipline procedures of R430-90-6; and

(d) reporting requirements if the care giver witnesses or suspects child abuse, neglect or exploitation.

(2) All care givers who provide services shall be at least 18 years of age or have completed high school or a G.E.D.

(3) There shall be at least one care giver at the home during business hours who has a current certification in basic child and infant first-aid and Cardiac Pulmonary Resuscitation, (CPR), and training in the Heimlich Maneuver for treatment of an obstructed airway.

(a) First-aid and CPR certification refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee of the program can demonstrate to the Department to be equivalent.

(b) Documentation of the completed First-Aid and CPR training must be in the care giver's personnel record.

(4) The licensee must ensure that an annual in-service training plan is developed and carried out. The plan shall be pertinent to the ages of the children in the program and must address the following areas:

(a) proper hand washing and sanitation techniques;

(b) principles of good nutrition;

(c) proper procedures in administration of medications;

(d) recognizing early signs of illness, communicable diseases and determining if there is a need to exclude a child from the program;

(e) accident prevention and safety principles;

(f) positive guidance for the management of children;

(g) child development; and

(h) age appropriate activities.

(5) If child care is provided to children under age two, the following in-service topics are also required:

(a) Preventing Shaken Baby Syndrome;

(b) Coping with crying babies; and

(c) Preventing Sudden Infant Death Syndrome.

(6) The licensee shall ensure that they and all care givers complete 20 hours of annual in-service training. At least ten hours of in-service training shall be person -to-person instruction.

(7) The licensee shall document successful completion of in-service training and maintain a record for themselves and each care giver which includes:

(a) the date training was completed;

(b) the topics covered; and

(c) the trainer's name and organizational affiliation.

(8) Each care giver upon employment and each licensee shall have a initial health evaluation within the past six months and complete tuberculosis testing every two years or as specified by the local health department.

R430-90-7. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control. Discipline measures shall be explained to the child at the time the discipline is imposed and may include:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Care givers shall not do any of the following:

(a) give corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restrain a child's movement by binding or tying;

(c) use abusive, demeaning or profane language;

(d) withdraw food or bathroom opportunities; or

(e) confine a child in a locked closet, room, or similar area.

(4) "Time out" that enables the child to regain control of himself or herself and that keeps the child in visual contact with the care giver shall be used selectively, taking into account the child's developmental stage and the usefulness of "time out" for the individual child.

(5) For children 18 months and older "tantrums" shall be interrupted every three minutes until control is obtained.

R430-90-8. Records.

(1) The licensee shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and phone number;

(c) name, address and phone number of at least three additional persons to be notified in the event of an emergency when the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care.

(2) The licensee shall ensure that children's records are organized and maintained to include the following:

(a) immunization record (Utah School Immunization Record -USIR) according to R396-100;

(b) a current (within the past six months) physical examination for children under age 6 (only at admission);

(c) child's health history required in R430-90-10(5) and any updates;

(d) injury, accident and incident reports; and

(e) medication administration records required in R430-90-10(7)(d).

(3) The licensee of the program shall maintain care giver records to include:

(a) background screening records;

(b) initial health evaluations and TB testing;

(c) food handler's permits;

(d) first-aid and CPR certifications; and

(e) in-service training records.

(3) The licensee shall ensure a record or log is maintained to document each enrolled child's attendance.

R430-90-9. Care Giver to Child Ratios.

The minimum ratio of care givers to children permitted in licensed small family and family group child care are set forth in tables 1 and 2.

TABLE 1
Family Minimum Care Giver to Child Ratios

Care giver	Children	Limits for Mixed Ages(a)
1	8	No more than two children under age 2
1	6	No more than three children under age 2

(a) The mixed ages include the care giver's children under age 5.

TABLE 2
Family Group Minimum Care giver to Child Ratios

Care Giver	Children	Limits for Ages	Group Size(b)(c)
1	12	All Children School-age	16
2	9-16	Mixed ages, only four under age 2	20

(b) There shall be at least two care givers in the licensed family group program at all times when there are nine or more children present, counting the care givers' own children, grand children, nieces, nephews, wards, step-children, under age 12, or when more than two infant's are present.

(c) The care giver's own children, grand children, nieces, nephews, wards, step-children are included in the maximum group size if they are under the age of 12.

R430-90-10. Child Health and Medications.

(1) The licensee may not care for a child without proof of immunization, or evidence of conditional enrollment, or evidence of personal, medical or religious exemption. Each child shall have immunizations as required by the Utah School Immunization Law, R396-100.

(2) The licensee shall observe each child daily for signs of illness.

(a) The licensee shall notify the parent or legal guardian immediately when illness is observed or suspected.

(b) The licensee must keep ill children separate from other children.

(3) If a communicable illness or parasite is discovered, the owner shall notify the parent or legal guardian of all enrolled children on the day of discovery. Notification shall protect the confidentiality of care givers and children.

(4) The parent or legal guardian shall submit a physical examination for all children under age six upon admission. The physical examination shall be completed by a licensed physician, nurse practitioner, or registered nurse.

(5) The parent or legal guardian shall provide a child health history upon admission which identifies:

(a) known allergies;

(b) chronic illnesses, disabilities or medical conditions;

(c) instructions for routine care; and

(d) instructions for emergency care.

(6) The parent or legal guardian shall annually review and update the child's health history with the licensee.

(7) If the licensee chooses to administer medications then:

(a) Medications may be administered to children only by a designated care giver who does the following:

(i) check the label and confirm the name of the child,

(ii) read the directions regarding measured doses, frequency, expiration date, and other administration guidelines, and

(iii) properly document administration of medication records according to subsection (d).

(b) Over-the-counter and prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have instructions for administration.

(c) The parent or legal guardian must complete a medication release form for each child receiving medications

that contains:

(i) the name of the medication,

(ii) the dosage,

(iii) the route of administration,

(iv) the times and dates to be administered,

(v) the illness or condition being treated, and

(vi) the parent's or legal guardian's signature.

(d) The care giver who administers a child's medication shall maintain a medication record that includes:

(i) the time, date, and dosage of the medication given;

(ii) the signature or initials of the care giver who administered the medication; and

(iii) documentation of any errors in administration or adverse reactions.

(e) The licensee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(f) Medications shall be secured from access to children.

(g) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.

(h) The licensee shall return all unused or out-of-date medications to the parent or legal guardian.

R430-90-11. Parent Notification and Child Security.

(1) The licensee shall establish a procedure for care givers to check who has written authorization to pick up children. Only the parents, legal guardian, or persons with written authorization from a parent or legal guardian shall be allowed to take any child from the home, except that verbal authorization may be used in emergency situations.

(2) The home of the licensee shall be accessible and open to parents or legal guardians during the hours of operation.

(3) The licensee shall establish a procedure for ensuring that all children's attendance is accounted for, which shall include requiring a sign-in and out procedure.

(4) The licensee shall establish written policies and monitor care givers to ensure that the use of tobacco in any form, the use of alcohol, the ingestion of any substance (including prescription medications) in amounts known to compromise responsible judgement, and the use of or possession of illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are under care

(5) In the case of a serious injury to a child which requires immediate hospital treatment, the licensee shall contact the parents or legal guardians after emergency personnel have been contacted.

(6) The licensee shall report to the Department any fatality, hospitalization, or emergency medical treatment required for a child in care within five working days from the occurrence.

R430-90-12. Activities.

(1) The licensee shall develop a daily activity plan that is designed for the age and development of the children accepted for care and ensure that there are sufficient supplies on hand.

(2) There shall be a minimum of 35 square feet of indoor play area per child. Toilet rooms, closets, hallways, and alcoves may not be included in calculating indoor play space. Play space does not include areas in the care giver home which are not included in the child care area.

(3) Outdoor play areas shall have at least 40 square feet per child. The total outdoor play area shall accommodate at least 40 per cent of the licensed capacity at one time.

(a) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict with this requirement, the licensee may request a variance from the Department. Any gaps within the fence shall not be greater that three and one-half inches. The bottom edges of the fence shall not be more than three and one-half inches above the ground.

(b) Outdoor play areas shall have a shaded area to protect children from excessive sun and heat. Drinking water shall be continuously accessible to children in the outdoor play area.

(4) If off-site activities are provided, parent or legal guardian permission is required for children to participate. Care givers shall take with them emergency phone numbers for each child attending the activity.

(5) If swimming activities are planned, care givers shall accompany children at pool side and lifeguards and pool personnel are not counted in care giver ratios.

(6) If care is provided to infants, a care giver shall provide physical and verbal stimulation every 30 minutes to each infant during waking hours, including the opportunity for physical activity. Physical activity may not confine an awake child to a single device, such as a walker or swing which restricts active movements for more than 30 minutes.

R430-90-13. Transportation.

(1) The licensee shall maintain documentation that any vehicle used for transporting children has a current vehicle registration, insurance for child care transportation, safety inspection and shall maintain the vehicle in a clean and safe manner.

(2) Each vehicle shall:

(a) have a first-aid kit and body fluid clean-up kit;

(b) be equipped with individual, size-appropriate safety restraints such as car seats or seat belts which are described in the federal motor vehicle safety standards contained in the Code of Federal Regulations, title 49, section 571.213, for each child that are appropriate to the vehicle type and are installed and used in the manner prescribed by the manufacturer;

(c) be enclosed; and

(d) be locked during transport.

(3) Smoking in vehicles is prohibited at all times that children are in the vehicle.

(4) Any vehicle used for transporting children shall be driven by an adult who holds a current state driver's license that authorizes the driver to operate the type of vehicle driven.

(5) The driver shall ensure that no child is unattended in the vehicle. The driver shall remove the keys whenever the driver is not in the driver's seat.

R430-90-14. Infection Control.

(1) All care givers shall comply with the universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen Standard.

(a) The licensee shall keep and maintain a portable blood

and bodily fluid clean-up kit.

(b) All care givers shall know the location of the kit and how to use it.

(c) All care givers shall wear new disposable latex gloves or an approved equivalent listed in OSHA part 1910.1030 for first-aid procedures involving blood or clean-up of blood containing bodily fluids.

(2) If children are admitted for care who require diapers, the following applies:

(a) Care givers shall change a child's diaper on a clean, smooth, washable, non-absorbent diapering surface and sanitize the surface after each use.

(b) The diapering area shall not be located in a food preparation area.

(c) Care givers shall place soiled diapers in a container that is lined and has a tightly fitting lid or take the diapers directly to an outside covered receptacle. Care givers shall clean and disinfect the inside diaper containers daily.

(3) If a child's clothing is soiled by fecal material or urine, a care giver shall change the clothing promptly and place the clothing in a leakproof container to be sent home with the parent or legal guardian.

(4) If personal hygiene items for children are maintained at the home such as combs or toothbrushes, they shall not be shared between children and shall be labeled and stored separately.

(5) The licensee shall clean and sanitize indoor activity equipment and toys weekly or more often as necessary.

(a) Stuffed animals shall be machine washable.

(b) If four or more infants are present for care, the licensee shall clean and sanitize the indoor equipment and toys used by the infants during the day.

(6) Care givers shall assure protection from contamination and the spread of microorganisms by implementing good hand washing practices. Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible. Care givers and children shall wash their hands after using the toilet, before and after eating, and before and after food preparation.

(7) Single-use paper towels or individually labeled cloth towels shall be used for drying hands. If cloth towels are used, the care giver shall wash the towels daily.

R430-90-15. Safety.

(1) Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(2) Infants and toddlers shall not have access to toys smaller than 1-1/4 inches in total diameter or length. Toys and equipment used by children must comply with the guidelines of the Consumer Product Safety Commission.

(3) High chairs shall have safety straps or devices to prevent children from falling out.

(4) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area during times when children are on the premises.

(5) Electrical outlets accessible to children shall be protected or capped with safety devices.

(6) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be in a locked or protected area to prevent access to children. All toxic or hazardous chemicals shall be stored in the original container, or labeled in the container.

(7) Fireplaces, open-face heaters, and wood burning stoves shall be inaccessible to children when in use. Portable space heaters are not permitted when children are on the premises.

(8) Outdoor play equipment shall be located over soft material or grass.

(9) All water hazards such as a swimming pool, stationary wading pool, ditches, and fish ponds shall be fenced to prevent access by children.

(10) Sharp objects, medicines, plastic bags, poisonous plants, lighters and matches must be stored out of reach and inaccessible to children.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

(12) Strings and cords long enough to encircle a child's neck, such as those found on pull toys, window blinds, or drapery cords, shall be inaccessible to children under five years of age.

(13) Any structure built prior to 1978 which has peeling, flaking, chalking, or failing paint on the interior or exterior shall be tested for lead-based paint. If paint lead levels are equal to or exceed 0.06% by weight, the structure must be remodeled by encapsulation or enclosure when possible or by complete removal of lead-based paint by trained individuals.

(14) Infant walkers with wheels are not permitted.

(15) The licensee shall provide separate sleep equipment for each infant designed for infant use, such as a crib, bassinet, porta-crib, or play pen. Infants shall be placed on their backs for sleeping.

R430-90-16. Fire, Emergency, and Disaster.

(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure, or other disasters that could create structural damage to the home or pose a health hazard. The plan shall include the procedure to transport and evacuate children to another location and the procedures to turn off gas, electricity and water.

(2) The licensee shall have an emergency plan in the case of a missing child or death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(3) The licensee shall hold simulated fire drills quarterly and an annual disaster drill. The licensee shall document the date of drills, participants, and the problems encountered.

(4) Each home shall have fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit at ground level shall be present leading to an open space.

(5) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number. The names and telephone numbers of the emergency medical personnel, fire department, police, and poison control shall be posted by the

telephone.

(6) The licensee shall maintain a first-aid kit at the residence.

R430-90-17. Housekeeping and Maintenance.

(1) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(2) There shall be adequate housekeeping services to maintain a clean, odor free, and sanitary environment.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(4) The licensee shall maintain the home at air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(5) If sleeping equipment or mats for sleeping are provided, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(6) The home shall be maintained to ensure that the equipment, fixtures, and furnishings are safe and in good repair.

(7) Sand boxes and outdoor play areas shall be kept free of animal excrement and harmful objects.

R430-90-18. Animals.

(1) If the licensee permits animals in the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available at the program for all diseases transmissible to humans; and

(c) the animals shall have no history of dangerous or aggressive behavior.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment. Animal cages and equipment shall not be cleaned in food preparation or food storage areas.

(3) The licensee of the program shall inform the parent or legal guardian of any known allergic or immune suppressed child of the types of animals kept at the home.

(4) Children shall not handle reptiles, including turtles and lizards.

R430-90-19. Food Service.

(1) If the local health department completes an inspection, the inspection report shall be maintained at the program for review by the Department.

(2) Food prepared by the care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents or legal guardians to serve to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents or legal guardians for individual child use must be labeled.

(c) Baby food must be refrigerated after opening, marked with the date and time of opening and discarded if not consumed within 24 hours of opening;

(d) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding

(3) All care givers who prepare or serve food and snacks must have a food handler's permit.

(4) Children's food shall be served on plates, napkins or other sanitary holders, which include a high chair tray. Multiple-use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(5) Meals and snacks shall be served at least once every three hours, or according to the menu.

(a) The current week's menu shall be posted for review by parents or guardians and all substitutions shall be noted on the menu;

(b) Menus can be obtained from the Department or shall be Department-approved, independently approved and signed by a registered dietitian, or approved through the United States Department of Agriculture Child and Adult Care Food Program.

(6) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(7) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.

R430-90-20. Penalty.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6 and Section 26-39-108.

KEY: child care facilities
August 20, 1998 **26-39**

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-35. Background Screening.

R432-35-1. Authority.

The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult management information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

(1) Home health care agencies;
(2) Hospice agencies;
(3) Nursing Care facilities;
(4) Assisted Living facilities;
(5) Small Health Care facilities;
(6) Residential Health Care facilities; and
(7) End Stage Renal Disease Facilities.

R432-35-2. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of a criminal offense or has a substantiated report of child abuse or neglect or disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21. In addition:

(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, and, for assisted living settings, all individuals residing in the home where an assisted living program is to be licensed, who are 18 years old and over.

(2) "Department" means the Utah Department of Health.

(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of abuse or neglect has occurred:

(a) physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness; or
(f) chronic or severe neglect.

R432-35-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-21.9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility.

(a) Immediately upon or prior to employing or licensing a covered individual, the health care facility shall submit applicant information, fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department. The Department shall submit them to the Criminal Investigations and Technical Services Division for additional screening.

(c) The fingerprint card that the covered individual submits shall be prepared either by the local law enforcement agency or an agency approved by local law enforcement.

(d) The Criminal Investigations and Technical Services Division, shall report the background screening and forward the fingerprint card to the Department. The Department shall review the criminal convictions within the past five years to determine whether to approve the covered individual for licensing or employment.

(e) If a covered individual applicant has lived in Utah less than five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(f) If based upon the BCI screening, the Department denies the covered individual a license, volunteer position or employment, the Department shall send a Notice of Agency Action to the health care provider or covered individual stating that the application is denied.

(2) The Department shall make the following determination if a covered individual has a criminal history record:

(a) If the covered individual was convicted of a felony, the covered individual may not provide direct services to a patient or volunteer in a program licensed by the Department.

(b) If the covered individual was convicted of a misdemeanor within the past five years, the covered individual may not provide direct patient services or volunteer in a health care program licensed by the Department if the misdemeanor involves offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense.

(c) If the covered individual is a person with a felony or misdemeanor conviction who resides in a home where health care is provided, the Department shall not issue a license for health care in the home.

(3) The Executive Director may consider an approval for licensing or employment of a covered individual who has been convicted of a misdemeanor, but not a misdemeanor involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, according to the following criteria:

(a) If the convictions are older than five years, the covered individual may provide direct patient care in a health care program licensed by the Department.

(b) If the convictions are within the last five years, the Department shall make a comprehensive review of the individual circumstances. If the Department finds that the covered individual's conduct is not adverse to the public health, morals, welfare, and safety of children or elderly or disabled adults, the covered individual may provide direct patient care in a health care facility licensed by the Department.

(c) If the convictions demonstrate a pattern of behavior which indicates that the covered individual's conduct is adverse to the public health, morals, welfare, and safety of children or

elder and disabled adults, the covered individual may not provide direct patient care in a health care facility licensed by the Department.

(4) The Department shall rely on the BCI as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the covered individual is denied a license or employment based upon the BCI and the covered individual disagrees with the BCI report, the covered individual may seek redress through the Criminal Investigations and Technical Services Division, as provided in Section 77-18-2.

(6) All covered individuals shall report all felony and misdemeanor convictions of covered individuals for offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense to the Department within 48 hours of conviction.

R432-35-5. Child, Elder, and Disabled Adult Abuse Management Information System.

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect, from the management information system maintained by the Utah Department of Human Services (DHS) for children and disabled or elder adults.

(2) If a covered individual appears on the management information system, the Department shall review the date of the substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.

(4) If the Department denies or revokes a license or employment based upon the child or disabled or elder adult abuse management information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of abuse, he must pursue an appeal with the DHS. If the covered individual agrees with the substantiated finding of abuse that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children or disabled or elder adults being served in the licensed health care facility.

(b) If a covered individual appeals the record of substantiation, the Department may hold the license or employment denial in abeyance until DHS renders a decision,.

(6) If the DHS determines a covered individual has a substantiated finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

KEY: health care facilities
August 28, 1998 26-21-9.5

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Foster Care Rules.
R501-12-1. Purpose Statement.

The purpose of these standards is to establish the minimum requirements for licensure of foster homes and proctor homes for children in the Department of Human Services, hereinafter referred to as DHS.

R501-12-2. Definitions.

A. "Foster care" means the provision of care which is conducive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

B. "Proctor care" means the provision of foster care for only one youth at a time placed in a licensed foster home. The youth shall be adjudicated to the custody of the Division of Youth Corrections.

C. "Licensing agent" means a person who is authorized to certify foster and proctor care providers in accordance with the legally approved Foster Care Rules.

D. "Foster care agency" is any authorized licensed private agency certifying providers for foster care services.

E. "Child" means anyone under 18 years of age with the exception of DYC proctor care where custody and guardianship may be maintained to the age of 21.

F. Rules applying to foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Authority.

Foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Youth Corrections, hereinafter referred to as DYC.

R501-12-4. Licensing and Renewal.

A. Application: An individual or legally married couple age 21 and over may apply to be foster parents. The applicant shall be provided with an application and a copy of the foster care licensing standards. The application shall require the applicant to list each member of the applicant's household.

B. Medical Information:

1. At the time of application, each potential foster parent shall obtain and submit to the foster care agency or the Office of Licensing, hereinafter referred to as OL, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster parent. On an annual basis thereafter, each foster parent shall submit a personal health status statement.

2. A psychological examination of a potential or current foster parent may be required by OL or the foster care agency if there are questions regarding the individual's mental stability which may impair functioning as a foster parent. The psychological examination shall be arranged and paid for by the foster parent.

C. References:

The applicant shall submit the names of individuals not related to the applicant who may be contacted by the foster care agency or OL for a reference. The named individuals, such as neighbors, school personnel, or clergy, shall be knowledgeable of the ability of the potential foster parents to nurture children. Three acceptable letters of reference must be received by the foster care agency or OL before a license will be issued.

D. Background Screening:

1. Criminal Background Screening, referred to as CBS, pursuant to 62A-2-120, requires that all child foster care applicants or persons 18 years of age or older living in the home must have the criminal background screening completed. This shall be completed on initial home approval and yearly thereafter. In accordance with 62A-2-120, no applicant can be licensed to provide foster care services when the applicant has been convicted of a felony.

2. The child abuse data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of alleged abuse and neglect has been substantiated. This shall be done on initial home approval and yearly thereafter.

a. In accordance with 62A-4a-116(2)(b) the following types of abuse and neglect shall be considered for licensing purposes:

1. physical abuse,
2. sexual abuse,
3. sexual exploitation,
4. abandonment, medical neglect resulting in death, disability, or serious illness, or
5. chronic or severe neglect.

b. In accordance with 62A-2-121, if the name of any individual living in the home appears on the child abuse data base as substantiated, a license may be denied, approved, or renewed based on a comprehensive review of the individual circumstances, conducted by DHS, in accordance with R501-18.

E. Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster home. The home study shall be updated annually with a home visit.

F. Provider Code of Conduct: Each foster care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

G. Training:

Each foster care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

H. Approval or Denial:

1. Following pre-service training and submission of all required documentation, the home study and assessment of an applicant shall be completed.

2. A license shall be issued for applicants who meet Foster Care Licensing Rules. In addition, the applicants shall be responsible to identify and meet any local ordinances applicable to the type of care.

3. The decision to approve or deny the applicant shall be made on the basis of observable facts and the professional judgement of the foster care agency or OL regarding the safety and sanitation conditions of the home.

4. No person may be denied a foster care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section

471(a)(18)(A).

5. The provider shall be evaluated annually for compliance with standards when renewing a license.

6. Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met. This license is valid for the duration of the specific placement only and must be renewed annually.

7. Licensure approval is not a guarantee that a child will be placed in the home.

8. Limitations on Licensed Providers:

a. Providers shall not be licensed to provide care for both adults and children.

b. Providers shall not be licensed to provide both child care and foster care.

c. Providers shall not be licensed for the following configurations of services; group care and child emergency care, or group care and foster care.

9. The Office of Licensing Director or designee may grant a variance to a rule if it is in the best interest of the specific child.

10. All providers shall report any major changes as listed in a. through e. in their lives to the licensor or foster care agency within 48 hours. These changes shall be re-evaluated within one month of the change by the licensor or foster care agency. A major change in the lives of the foster parents shall include, but is not limited to the following;

a. death or serious illness among the members of the foster family,

b. separation or divorce,

c. loss of employment,

d. change of residence, or

e. suspected abuse or neglect of any child in the foster home.

R501-12-5. Training.

A. Applicants shall attend training required by the applicable DHS Division or other approved entity and submit verification of completed training to the licensor or foster care agency.

B. At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.

C. Providers associated with a foster care agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

R501-12-6. Foster Parent Requirements.

A. Personal characteristics of foster parents shall include the following:

1. Foster parents shall be in good health, able to provide physical and emotional care to the child.

2. Foster parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster parents.

3. Foster parents shall have the ability to help the child grow and change in behavior.

4. Foster parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to OL or foster care agency on an annual basis.

5. Division employees shall not be approved as foster parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

6. Owners, directors, and members of the governing body for foster care agencies shall not serve as foster parents.

7. Foster parents shall follow agency rules and work cooperatively with the agency, State Court, and law enforcement officials.

B. Family Composition shall meet the following:

1. The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.

2. Variance requests for the following must address why a variance is in the best interests of the child, and how basic health and safety requirements will be maintained, in accordance with R501-1-8.

a. No more than two children under the age of two, shall reside in a foster home, including natural children.

b. No more than two non-ambulatory children shall be in a foster home including infants under the age of two.

c. No more than four foster children shall be in any one home.

d. No more than six children shall be in a foster home including the foster parent's children under the age of 18.

e. No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DYC.

R501-12-7. Physical Aspects of Home.

A. The home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.

B. The physical facilities of the home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

C. The home shall be free from health and fire hazards. Each home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

D. There shall be sufficient bedroom space to provide for the following:

1. rooms are not shared by children of the opposite sex, except infants under the age of two years,

2. children do not sleep in the parents' room, except infants under the age of two years,

3. each child has his or her own solidly constructed bed adequate to the child's size,

4. a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and

5. no more than four children are housed in a single bedroom.

E. Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

F. Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.

G. There shall be adequate indoor and outdoor space for recreational activities.

H. Foster homes shall offer sufficiently balanced meals to meet the child's needs.

I. All indoor and outdoor areas shall be maintained to ensure a safe physical environment.

J. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

K. Equipment:

All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.

L. Exits:

There shall be at least two means of exit on each level of the home.

R501-12-8. Safety.

A. Foster families shall conduct and document fire drills at least quarterly.

B. Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety.

C. The home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

D. The home shall have an adequately supplied first aid kit.

E. Foster parents maintaining firearms in the home shall assure that the firearms are inaccessible to children at all times. Firearms and ammunition shall be securely locked. Firearms kept in the home or on the premises will be rendered inoperable when possible.

F. No firearms shall be allowed in foster homes that contract with DYC.

G. Foster parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

H. There shall be locked storage for hazardous chemicals and materials.

R501-12-9. Emergency Plans.

A. Foster parents shall have a written plan of action for emergencies and disaster to include the following:

1. evacuation with a pre-arranged site for relocation,

2. transportation and relocation of children when necessary,

3. supervision of children after evacuation or relocation, and

4. notification of appropriate authorities.

B. Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

C. Foster parents shall immediately report any serious illness, injury or death of a foster child to the appropriate Division or foster care agency worker and OL licensor.

R501-12-10. Infectious Disease.

Foster parents shall abide by policies and procedures designed to prevent or control infectious and communicable diseases in the home.

R501-12-11. Medication.

A. Foster parents shall administer prescribed medication, according to the written directions of a licensed physician. Medicine shall only be given to the child for whom it was prescribed.

B. Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.

C. Non-prescriptive medications may be administered by foster parents according to manufacturer's instructions.

D. Medications shall not be administered by the foster child.

E. Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or foster care agency worker.

F. There shall be locked storage for medication.

R501-12-12. Transportation.

A. Foster parents shall provide routine transportation. In case of an emergency a means of transportation shall be arranged by the foster parents.

B. Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

C. Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.

D. An emergency telephone number shall be in the vehicle used to transport children.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

R501-12-13. Behavior Management.

A. Foster parents shall provide appropriate supervision at all times.

B. Foster parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children.

C. The foster parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.

D. Passive restraint shall be used only in behaviorally related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

E. Foster parents shall inform the Division or foster care agency worker of any extreme or repeated behavioral problems of a child placed in the foster home.

R501-12-14. Child's Rights in Foster Care.

A. The foster parent shall adhere to the following:

1. allow the child to eat meals with the family, and to eat the same food as the family unless the child has a special prescribed diet,

2. allow the child to participate in family activities,

3. protect privacy of information,

4. not make copies of consumer records,

5. explain the child's responsibilities, including household tasks, privileges, and rules of conduct,

6. not allow discrimination,

7. treat the child with dignity,

8. allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise.

9. follow visitation rights as provided by DHS or foster care agency worker,

10. allow the child to send and receive mail providing that security and general health and safety requirements are met, foster parents may only censor or monitor a foster child's mail or phone calls by court order,

11. provide for personal needs and clothing allowance, and

12. respect the child's religious and cultural practices.

R501-12-15. Record Keeping.

A. Foster parents shall maintain the following:

1. current license certificate,

2. copy of each contract with the Department of Human Services.

3. record of money provided to each foster child,

4. record of expenditures for each foster child, and

5. documentation of special need payments on behalf of the foster child.

B. Foster parents shall maintain the out of home placement information record for each child in their care to include the following:

1. placement information for each child in out of home care,

2. biographical information, including an emergency contact name and telephone number,

3. documentation of the health care record of each child, including the following;

a. immunizations.

b. physical, mental, visual, and dental examinations,

c. emergencies requiring medical treatment, and

d. medication, when applicable, and

4. summary of family visits and contacts, when appropriate, according to the service plan.

C. Foster parents shall ensure that the out of home record accompanies the child or is returned to the foster care agency upon relocation of the child.

D. The OL staff shall maintain a separate record for each provider.

KEY: licensing, human services, foster care
August 17, 1998 62A-2-101-121

R525. Human Services, Mental Health, State Hospital.
R525-6. Prohibited Items and Devices.
R525-6-1. Prohibited Items and Devices.

Pursuant to the requirements of Sections 62A-12-203(4) and 76-8-311.1, the entire campus and all facilities of the Utah State Hospital, including its buildings and grounds are designated as secure areas by this rule. Accordingly all weapons, contraband, controlled substances, ammunition, items that can implement escape, explosives, spirituous or fermented liquors, firearms, or any devices that are normally considered to be weapons are prohibited from entry into the campus of the Utah State Hospital. Persons entering the Utah State Hospital campus must secure all weapons in their locked vehicles, out of sight, or they may secure their weapon in a secure storage locker. Secure storage lockers for public use are identified and accessed through directions provided at the entrance of the Utah State Hospital campus. A person is not in violation of this rule during the time required to directly enter the campus and immediately place a weapon in a secure storage locker or immediately secure it out of sight in a locked vehicle.

KEY: weapons
August 15, 1998 **62A-12-203(4)**
76-8-311.1
76-8-311.3(2)

R527. Human Services, Recovery Services.
R527-253. Collection of Child Support Judgments.
R527-253-1. Collection of Child Support Judgments.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) may demand and collect immediate payment in full, or may demand and collect payments that will result in payment in full within a period of time that is deemed to meet the interests of the state in child support judgment matters.

2. ORS/CSS may collect a child support judgment through income withholding, liens, tax refund intercepts, and any other legal remedy available. Initiation of a particular remedy shall not limit ORS/CSS from initiating any other remedy at the same time.

KEY: administrative law, child support
August 17, 1998 62A-11-320
Notice of Continuation October 31, 1997

R657. Natural Resources, Wildlife Resources.
R657-6. Taking Upland Game.
R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 1996 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the proclamation of the Wildlife Board for taking upland game.

R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Baited area" means any area where shelled, shucked or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing migratory and upland game birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for ten days following complete removal of all such corn, wheat, or other grain, salt, or other feed.

(b) "Baiting" means the placing, depositing, exposing, distributing, or scattering of shelled, shucked or unshucked corn, wheat, or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on, or over any area where hunters are attempting to take migratory and upland game birds.

(c) "CFR" means the Code of Federal Regulations.

(d) "Closed season" means the days on which migratory game birds shall not be taken.

(e) "Commercial hunting area" means private land operated under Rule R657-22, where hatchery or artificially raised or propagated game birds are released for the purpose of hunting during a specified season and where a fee is charged.

(f) "Falconry" means the sport of taking quarry by means of a trained raptor.

(g) "Field possession limit" means no person may possess, have in custody, or transport, whichever applies, more than the daily bag limit of migratory game birds, tagged or not tagged, at or between the place where taken and either:

(i) his or her automobile or principal means of land transportation;

(ii) his or her personal abode or temporary or transient place of lodging;

(iii) a migratory bird preservation facility; or

(iv) a post office or common carrier facility.

(h) "Immediate family" means the landowner's spouse, children, father, mother, brother, sister, stepchildren and grandchildren.

(i) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(j) "Migratory game bird" means, for the purposes of this rule, mourning dove, band-tailed pigeon, and sandhill crane.

(k) "Nontoxic shot" means soft iron, steel, copper-plated steel, nickel-plated steel , zinc-plated steel, bismuth, and any other shot types approved by the U.S. Fish and Wildlife Service. Lead, nickel-plated lead, copper-plated lead, copper and lead/copper alloy shot have not been approved.

(l) "Open season" means the days when migratory and upland game birds may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(m) "Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from a temporary or transient place of abode or dwelling, such as a hunting club, cabin, tent, or trailer house used as a hunting club or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

(n) "Cooperative Wildlife Management Unit" means a generally contiguous area of private land open for hunting small game, waterfowl, or big game by permit that is registered in accordance with Rules R657-21 and R657-37.

(o) "Possession limit" means, for purposes of this rule, the number of upland game birds one individual may have in possession at any one time.

(p) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(q) "Upland game" means pheasant, quail, chukar partridge, Hungarian partridge, sage grouse, ruffed grouse, blue grouse, sharp-tailed grouse, cottontail rabbit, snowshoe hare, white-tailed ptarmigan, wild turkey, and the following migratory game birds: mourning dove, band-tailed pigeon, and sandhill crane.

(r) "Wildlife Habitat Authorization" for purposes of this rule means the primary document granting authority to engage in activities under:

(i) the Wildlife Resources Code; or

(ii) a rule or proclamation of the Wildlife Board.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds (mourning dove, band-tailed pigeon and sandhill crane).

(2)(a) A person must call 1-800-WETLAND (1-800-938-5263) to obtain their HIP registration number. Use of a public pay phone will not allow access to 1-800-WETLAND.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license code key;

(c) name;

(d) address;

(e) birth date; and

(f) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and

provided information for the HIP program.

R657-6-4. Permits for Ptarmigan and Band-tailed Pigeon.

(1) A person may not take or possess:

(a) ptarmigan without first obtaining a ptarmigan permit; or

(b) band-tailed pigeon without first obtaining a band-tailed pigeon permit.

(2) Ptarmigan and band-tailed pigeon permits are available from Division offices free of charge.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Applications are available from Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for sandhill crane is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) Group applications for sandhill crane will not be accepted.

(b) Applications mailed in the same envelope will be accepted, but will be processed and drawn individually.

(4)(a) A person may obtain only one sandhill crane permit each year.

(b) A person may not apply more than once annually.

(5) A $5 nonrefundable handling fee must be submitted with the application.

(6) A Wildlife Habitat Authorization and a small game license or combination license may be purchased before applying, or the Wildlife Habitat Authorization and small game license or combination license will be issued upon successfully drawing a permit. Fees must be submitted with the application.

(7) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(8) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(9) Applications must be sent to:

SANDHILL CRANE APPLICATIONS

P.O. Box 168888

Salt Lake City, Utah 84116-8888.

(10) The date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

(11) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

R657-6-6. Application Procedure for Wild Turkey.

(1)(a) Applications are available from Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for wild turkey is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) Group applications for wild turkey will not be accepted.

(b) Applications mailed in the same envelope will be accepted, but will be processed and drawn individually.

(4)(a) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.

(b) A person may not apply for wild turkey more than once annually.

(5) A Wildlife Habitat Authorization and small game license or combination license may be purchased before applying or the Wildlife Habitat Authorization and small game license or combination license will be issued upon successfully drawing a permit. Fees must be submitted with the application.

(6) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(7) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(8) Applications for wild turkey must be sent to:

WILD TURKEY APPLICATIONS

P.O. Box 168888

Salt Lake City, Utah 84116-8888.

(9) The date the drawing results are posted is published in the proclamation of the Wildlife Board for taking upland game.

(10) Any permits remaining after the drawings are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(11) Unsuccessful applicants will receive a refund in March.

(12) Any person who obtained a Rio Grande turkey permit during the preceding year may not apply for or obtain a Rio Grande turkey permit for the following two years. Any person who obtains a Rio Grande turkey permit in the current year, may not apply for or obtain a Rio Grande turkey permit for a period of two years, except:

(a) Waiting periods do not apply to the purchase of turkey permits remaining after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

(b) Waiting periods do not apply to conservation permits or landowner permits.

R657-6-7. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys

are available to private landowners through a drawing.

(b) Landowners interested in obtaining landowner permits must contact the regional Division office in their area before December 15 to be eligible for the landowner permit drawing.

(c) Landowner permit applications that are not signed by the local Division biologist will be rejected.

(d) Landowner permit applications must be received in the Salt Lake Division Office by the date published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) A landowner who owns at least 640 acres of critical habitat that supports wild Merriam's turkeys or at least 20 acres of critical habitat that support wild Rio Grande turkeys within any of the open limited entry areas for wild turkeys is eligible to participate in the drawing for available landowner turkey permits.

(b) "Critical habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(3)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit;

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit; or

(iii) donate the permit to a qualified 501C-3 conservation organization as provided in Rule R657-41.

(b) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(4) The drawing results for landowner permits shall be posted on the date published in the proclamation of the Wildlife Board for taking upland game.

(5) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(6)(a) A waiting period does not apply to landowner permits.

(b) Only one permit may be issued to a landowner per year.

R657-6-8. Purchase of Wildlife Habitat Authorization, License, or Permit by Mail.

(1) A nonresident may obtain a license and Wildlife Habitat Authorization by mail by sending the following information to the Salt Lake Division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification and fees.

(2) A person may obtain a ptarmigan permit, band-tailed pigeon permit or sharp-tailed grouse permit by mail by sending the following information to the Salt Lake Division office: full name, complete mailing address, phone number, Wildlife Habitat Authorization number and hunting license number.

(3) Residents may send a personal check, cashier's check, or money order. Nonresidents must send either a cashier's check or money order. Personal checks are not accepted from nonresidents.

(4) Checks must be made payable to Utah Division of Wildlife Resources.

R657-6-9. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, or a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size no. 2 or smaller and no. 8 or larger, except:

(i) migratory game birds may not be taken with a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) wild turkey may be taken only with a bow and broadhead arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes BB or smaller and no. 6 or larger;

(iii) cottontail rabbit and snowshoe hare may be taken with archery equipment or any firearm not capable of being fired fully automatic; and

(iv) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in the Big Game Proclamation.

(b) Crossbows are not legal archery equipment for taking upland game species.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-6-10. Nontoxic Shot.

(1) Only nontoxic shot may be used to take sandhill crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except sandhill crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service for taking migratory game birds while hunting sandhill crane or while on federal refuges or the following state wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-11. Use of Firearms and Archery Tackle on State Wildlife Management Areas.

A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Bottoms, Bud Phelps, Castle Dale, Huntington, Cedar, Goshen Warm Springs, James Walter Fitzgerald, Logan, Mallard Springs, Manti Meadows, Milford, Nephi, Pahvant, Richfield, Roosevelt, Scott M. Matheson Wetland Preserve, Vernal, and Willard Bay.

R657-6-12. Use of Firearms and Archery Tackle on State

Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

R657-6-13. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Mourning dove, band-tailed pigeon and sandhill crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage grouse, ruffed grouse, blue grouse, sharp-tailed grouse, white-tailed ptarmigan, chukar partridge, Hungarian partridge, pheasant, quail, wild turkey, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) Pheasant and quail may not be taken prior to 8 a.m. on the opening day of the pheasant and quail seasons.

(3) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-14. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-15. Falconry.

(1)(a) Falconers must obtain an annual Wildlife Habitat Authorization, a small game or combination license and a falconry license to hunt upland game and must also obtain:

(b) a ptarmigan permit before taking ptarmigan;

(c) a band-tailed pigeon permit before taking band-tailed pigeon;

(d) a sharp-tailed grouse permit before taking sharp-tailed grouse; or

(e) a sandhill crane permit before taking sandhill crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

R657-6-16. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-6-17. Baiting Upland Game.

(1) A person may not hunt upland game birds by baiting, or on or over a baited area.

(2) It is not necessary for the hunter to know an area is baited to be in violation.

R657-6-18. Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-6-19. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads.

R657-6-20. Possession of Live Protected Wildlife.

A person may not possess live, protected wildlife. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-21. Tagging Requirements.

(1) The carcass of a sandhill crane or turkey must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue sandhill crane, sharp-tailed grouse or turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-22. Identification of Species and Sex.

(1) One fully feathered wing must remain attached to each upland game and migratory game bird taken, except wild turkey, while it is being transported to allow species identification.

(2) The head must remain attached to the carcass of wild turkey while being transported to permit species and sex identification.

R657-6-23. Waste of Upland Game Birds.

A person shall not kill or cripple any upland game bird without making a reasonable effort to retrieve the bird.

R657-6-24. Utah Pheasant Project.

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

R657-6-25. Use of Dogs.

(1) Dogs may be used to locate and retrieve upland game

during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

(3) State wildlife management and waterfowl management areas are listed under Sections R657-6-11 and R657-6-12.

R657-6-26. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake County Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, Layton, Logan, Pleasant View City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Waterfowl Management Areas:

(a) Waterfowl management areas are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-6-27. Live Decoys and Electronic Calls.

A person may not take migratory game birds by the use or aid of live decoys, records or tapes of migratory bird calls or sounds, or electronically amplified imitations of bird calls.

R657-6-28. Baiting Migratory Game Birds.

Migratory game birds may not be taken by the aid of baiting, or on or over any baited area. However, nothing in this paragraph shall prohibit:

(1) the taking of sandhill crane, mourning dove, and band-tailed pigeon on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(2) the taking of sandhill crane, mourning dove, and band-tailed pigeon on or over any lands where feed has been distributed or scattered solely as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes.

R657-6-29. Transporting Another Person's Birds.

(1) No person may receive, transport, or have in custody any migratory game birds belonging to another person unless such birds have a tag attached that states the total number and species of birds, the date such birds were killed, and the address, signature, and license number of the hunter.

(2) No person shall import migratory game birds belonging to another person.

R657-6-30. Gift of Migratory Game Birds.

No person may receive, possess, or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunters address, the total number and species of birds and the date such birds were taken.

R657-6-31. Shipping.

(1) No person may transport by the Postal Service or a common carrier migratory game birds unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing migratory game birds within or from the state.

R657-6-32. Importation Limits.

No person shall import during any one calendar week beginning on Sunday more than 25 doves, singularly or in the aggregate, or ten band-tailed pigeons from any foreign country, except Mexico. Importation of doves and band-tailed pigeons from Mexico may not exceed the maximum number permitted by Mexican authorities to be taken in any one day.

R657-6-33. Transfer of Possession.

(1) A person may not put or leave any migratory game bird at any place other than at his personal abode or in the custody of another person for picking, cleaning, processing, shipping, transporting, or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt, or transportation slip signed by the hunter stating his address, the total number and species of birds, and the date such birds were killed.

(2) A migratory bird preservation facility may not receive or have in custody any migratory game bird without the documents required in Subsection (1).

R657-6-34. Waste of Migratory Game Birds.

No person shall kill or cripple any migratory game bird without making a reasonable effort to retrieve the bird, and retain it in his actual custody, at the place where taken or between that place and his automobile or principle means of land transportation; and either his personal abode or temporary or transient place of lodging; or a migratory bird preservation facility or a post office or a common carrier facility.

R657-6-35. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the proclamation of the Wildlife Board for taking upland game.

KEY: wildlife, birds, rabbits*, game laws

August 19, 1998	**23-14-18**
Notice of Continuation June 16, 1997	**23-14-19**

R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division must use all revenue derived from conservation permits for the benefit of the species for which the permit is issued.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a specific species, and may include an extended season, or legal weapon choice, or both, beyond the general season.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division to generate revenue for the benefit of the species for which the permit is authorized and issued.

(d) "Sportsman Permit" means a harvest permit authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(e) "Statewide Conservation Permit" means a permit which allows a permittee to hunt:

(i) big game species on any open unit from September 1 through December 31; and

(ii) small game species on any open unit during the season authorized by the Wildlife Board.

R657-41-3. Method for Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits issued by the Wildlife Board is based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) The recommended number of conservation permits available will be based on the following table.

TABLE 1
PERMIT NUMBERS

Public Permits	Conservation Permits
2-14	1
15-24	2
25-34	3
35-44	4
45-54	5
55-70	6
71-85	7
86-100	8
101-150	9
151-200	10
201+	5%

(3) One statewide conservation permit may be authorized for each big game and small game species for which limited permits are available.

(4) A limited number of area conservation permits may be authorized, with a maximum of five percent of the permits, for any unit or hunt area.

(5) The number of conservation and sportsman permits available for use during the following year will be determined by the Wildlife Board annually.

(6) Dedicated hunter and poaching reward permits may reduce the formula for conservation permits. Dedicated hunter and poaching reward permits are defined in Rules R657-38 and R657-5 respectively.

(7) Conservation permits are deducted from the number of public drawing permits. (8) One sportsman permit may be authorized for each statewide conservation permit authorized.

R657-41-4. Obtaining Conservation Permits.

(1) Statewide and area conservation permits are available to eligible conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities.

(2) Conservation organizations may apply for conservation permits by sending an application to the division for each permit requested.

(3) The application must be submitted to the division by June 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended;

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(e) the type of permit and species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4)(a) Conservation organizations must include the information as provided in Subsection (b) or (c).

(b) The estimated revenue expected to be returned to the division.

(i) The estimated revenue must be based on 90 percent of the auction or fund raising activity amount being submitted to the division, or the minimum amount listed in the following table, whichever is greater.

(ii) The basis for the estimated return to the division must include the conservation organization's experience in similar activities, and details of the marketing plan.

(iii) The remaining ten percent of the auction or fund

raising activity amount may be retained by the conservation organization for administrative expenses.

TABLE 2
TYPE OF PERMIT

Species	Statewide Recommended Bid	Area
Rocky Mountain Bighorn (Ram)	$40,000	$20,000
Desert Bighorn (Ram)	30,000	20,000
Buck Deer	10,000	2,000
Bull Elk	10,000	4,000
Bull Moose	10,000	3,000
Bison (Hunter's Choice)	5,000	5,000
Rocky Mountain Goat (Hunter's Choice)	5,000	3,000
Buck Pronghorn	2,000	1,000
Black Bear	2,000	1,000
Cougar	2,000	500
Turkey	350	250

(c) A specific project proposal that includes:

(i) a schedule for project completion;

(ii) the benefits to the affected species;

(iii) justification for the conservation organization retaining more than ten percent of the revenue, showing increased benefit to the species, over remitting the funds to the division. Under this option, the division must receive the cost of the permit.

(iv) Proposals which integrate well with the division's species plans and objectives will be given emphasis in the evaluation.

(5) An application which is incomplete or completed incorrectly may be rejected.

(6) The Wildlife Board will make the final assignment of conservation permits at a meeting prior to October 1 annually, based on the:

(a) application;

(b) benefit to the species;

(c) division recommendation; and

(d) previous performance of the conservation organization.

(7) The division and conservation organization receiving the permits shall enter into a contract.

(8) The conservation organization receiving permits shall certify that the permits are distributed by lawful means.

R657-41-5. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);

(b) bison (hunter's choice);

(c) buck deer;

(d) bull elk;

(e) Rocky Mountain goat (hunter's choice)

(f) bull moose; and

(g) buck pronghorn.

(2) The following information is provided in the proclamation of the Wildlife Board for taking big game:

(a) hunt dates;

(b) open units or hunt areas;

(c) application procedures;

(d) fees; and

(e) deadlines.

R657-41-6. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits
August 19, 1998 **23-14-18**
23-14-19

R657. Natural Resources, Wildlife Resources.
R657-42. Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.
R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38, the division may issue licenses, permits, tags and certificates of registration in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;

(b) surrender of licenses, certificates of registration and permits;

(c) refund of licenses, certificates of registration and permits; and

(d) reallocation of permits.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

R657-42-3. Permit Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit.

(3) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrender of Licenses, Certificates of Registration and Permits.

(1) Any person who has obtained a license, certificate of registration or permit and decides not to use it, may surrender the license, certificate of registration or permit to any division office.

(2) If a license, certificate of registration or permit is surrendered prior to the season date of the license, certificate of registration or permit, the division shall waive the waiting period normally assessed and the number of bonus points, if applicable, shall be reinstated.

(3) A Cooperative Wildlife Management Unit permit must be surrendered before the following dates:

(a) September 1 for general buck deer, general bull elk, pronghorn, and moose;

(b) the opening of the general archery deer season for archery buck deer and archery bull elk;

(c) September 1 for muzzleloader deer and elk seasons;

(d) August 15 for antlerless elk seasons;

(e) August 15 for antlerless deer seasons;

(f) prior to the applicable season date for small game and waterfowl; and

(g) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds of Licenses, Certificates of Registration and Permits.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with Section 23-19-38.

(2) All refunds must be processed through the Salt Lake Division office.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and Cooperative Wildlife Management Unit permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list.

(b) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(c) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(d) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season opens for that permit.

(4) Any private Cooperative Wildlife Management Unit permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the Division in accordance with Rule R657-37.

R657-42-7. Reallocated Permit Cost.

Any person who accepts the offered reallocated permit must pay the applicable permit fee.

KEY: wildlife, permits
August 19, 1998 **23-19-1**
23-19-38

R657. Natural Resources, Wildlife Resources.

R657-45. Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms.

R657-45-1. Purpose and Authority.

Under authority of Sections 23-14-19 and 23-19-2 the Wildlife Board has established this rule for prescribing the forms of a Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate

R657-45-2. Information Listed on the License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms.

(1) A License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate for hunting or fishing shall be made upon forms and in the manner prescribed by the Wildlife Board.

(2) The License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate forms shall include the licensee's name, address, date of birth, social security number, and any other information the Division of Wildlife may request.

KEY: license, permit, certificate of registration
August 19, 1998 23-19-2

R686. Professional Practices Advisory Commission, Administration.

R686-101. Alcohol Related Offenses.

R686-101-1. Definitions.

A. "Commission" means the Professional Practices Advisory Commission.

B. "Alcohol related offense" means:

(1) driving while intoxicated;

(2) alcohol-related reckless driving;

(3) public intoxication;

(4) driving with an open container;

(5) unlawful sale or supply of alcohol;

(6) unlawful purchase, possession, or consumption of alcohol;

(7) unlawful permitting of consumption of alcohol by minors;

(8) unlawful consumption of alcohol in public places.

C. Certificated educator means an individual issued a certificate by the State Board of Education authorizing the certificate-holder to work in the Utah public school system.

D. Board" means the Utah State Board of Education.

R686-101-2. Authority and Purpose.

A. This rule is authorized by Section 53A-7-110 which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.

R686-101-3. Action by the Commission if a Certificated Educator Has Been Convicted of an Alcohol Related Offense.

A. If as a result of a background check, it is discovered that a certificated educator has been convicted of an alcohol related offense in the previous five years, the following minimum conditions shall apply:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction. If the educator is currently employed, the Commission shall also send a letter of reprimand to the educator regarding the convictions with a copy to the educator's employer.

(3) Three convictions--the Commission shall recommend to the Board suspension of the educator's certificate.

B. This rule does not preclude more serious or additional action by the Commission against an educator for other related or unrelated offenses.

R686-101-4. Commission Action Towards an Individual Who Does Not Hold Certification.

If as a result of a background check, it is discovered that an individual inquiring about teacher certification, seeking information about teacher certification, or placed in a public school for a variety of purposes has been convicted of an alcohol related offense within five years of the date of the background check, the following minimum conditions shall apply:

A. One conviction--the individual shall be denied approval for Commission clearance for a period of one year from the date of the arrest;

B. Two convictions--the individual shall be denied approval for Commission clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before Commission clearance shall be considered; and

C. Three convictions--the Commission shall recommend denial of clearance.

R686-101-5. Previous Clearance.

If the applicant or certificated educator presents documentation to the Commission that recently discovered conviction(s) have previously been addressed by the Commission, the Commission need not reconsider the conviction(s) absent additional convictions of the applicant or certificated educator.

KEY: teachers, disciplinary actions
August 15, 1998 53A-7-110

R686. Professional Practices Advisory Commission, Administration.

R686-102. Drug Related Offenses.

R686-102-1. Definitions.

A. "Commission" means the Professional Practices Advisory Commission.

B. "Drug related offense" means any offense designated in Section 58-37 through 37e.

C. "Drug" means any controlled substance designated as such in Section 58-37-4.

D. "Certificated educator" means an individual issued a certificate by the State Board of Education authorizing the certificate-holder to work in the Utah public school system.

E. "Conviction" means the final disposition of a judicial action for a drug related offense defined under 58-37 through 37e. It includes no contest pleas, pleas in abeyance, expunged convictions and drug related offenses that are plead down to lesser convictions.

R686-102-2. Authority and Purpose.

A. This rule is authorized by Section 53A-7-110 which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.

R686-102-3. Action by the Commission if a Certificated Educator Has Been Convicted of an Drug Related Offense.

A. If as a result of a background check, it is discovered that a certificated educator has been convicted of a drug related offense in the previous ten years, the following minimum conditions shall apply:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction.

(a) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of warning to the educator.

(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and a letter to the district with notice of treatment.

(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and a copy of the letter of reprimand to the educator's employer and the Commission may initiate an investigation of the educator based upon the drug offenses.

(3) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction.

(a) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of warning to the educator.

(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.

(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, the Commission shall recommend suspension of the educator's certificate to the Board.

B. This rule does not preclude more serious or additional action by the Commission against an educator for other related or unrelated offenses.

R686-102-4. Commission Action Towards an Individual Who Does Not Hold Certification.

If as a result of a background check, it is discovered that an individual inquiring about teacher certification, seeking information about teacher certification, or placed in a public school for a variety of purposes has been convicted of an drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:

A. One conviction--the individual shall be denied approval of Commission clearance for a period of one year from the date of the arrest.

B. Two convictions--the individual shall be denied approval of Commission clearance for a period of three years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before Commission clearance shall be considered.

C. Three convictions--the individual shall be denied approval of Commission clearance for a period of five years from the date of the most recent arrest. The Commission shall require the applicant to present documentation of clinical treatment and may recommend denial of clearance.

R686-102-5. Previous Clearance.

If the applicant or certificated educator presents documentation to the Commission that recently discovered conviction(s) have previously been addressed by the Commission, the Commission need not reconsider the conviction(s) absent additional convictions of the applicant or certificated educator.

KEY: teachers, disciplinary actions
August 15, 1998 53A-7-110

R710. Public Safety, Fire Marshal.

R710-1. Concerns Servicing Portable Fire Extinguishers.

R710-1-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.

There is adopted as part of these rules the following code which is incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 1998 edition, except as amended by provisions listed in R710-1-8, et seq.

1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

1.3 Validity.

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.4 Order of Precedence.

In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.

R710-1-2. Definitions.

"Annual" means a period of one year or 365 calendar days.

"Board" means Utah Fire Prevention Board.

"Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

"Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

"Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

"Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.

"License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

"NFPA" means National Fire Protection Association.

"Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

"SFM" means State Fire Marshal.

"UCA" means Utah State Code Annotated 1953 as amended.

R710-1-3. Licensing.

3.0 License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.1 Application.

(a) Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

(b) As of January 1, 1999, the application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.2 Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.3 Equipment Inspection.

The applicant shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained.

3.4 Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

3.5 Original, Valid Date.

Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Thereafter, each license shall be renewed annually and renewals thereof shall be valid from January 1st through December 31st. Original licenses purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Licenses issued on or after November 1st will be valid through December 31st of the following year.

3.6 Renewal, Valid Date.

Application for renewal shall be made before January 1st of each year. Application for renewal shall be made in writing, on forms provided by the SFM.

3.7 Refusal to Renew.

The SFM may refuse to renew any license in the same manner, and for any reason, that he is authorized, pursuant to Section 10 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original license which has been denied by the SFM.

3.8 Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

3.9 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.10 List of Licensed Concerns.

The SFM shall make available, upon request and without cost, to the chief fire official of each local fire authority, the name, address, and license number of each concern that is licensed pursuant to these rules. Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.11 Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

3.12 SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern in writing.

3.13 Type.

(a) Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

(b) Licenses shall authorize any one, or any combination of the following types of activities:

(1) Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

(2) Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders that are listed and marked in conformance with the United States Department of Transportation (I.C.C.) rules, or

(3) Type 3 - Conducting hydrostatic tests of dry chemical, halon, water, and water chemical type fire extinguishers, or

(4) Type 4 - Servicing and maintaining all types of extinguishers, excluding hydrostatic testing.

(c) No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

3.14 Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

3.15 Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

3.16 Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

3.17 Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.18 Restrictive Use.

(a) No license shall constitute authorization for any licensee, or any of his employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

(b) No license shall constitute authorization for any licensee, or any of his employees, to enforce any provision, or provisions, of this rule, or the Uniform Fire Code.

3.19 Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

3.20 Registration Number.

(a) Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

3.21 Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

(a) Type 4 license:

(1) Nitrogen tank.

(2) Nitrogen regulator and hose assembly.

(3) Minimum of twelve (12) recharge adapters.

(4) Valve cleaning brush.

(5) Scoop.

(6) Funnel for A:B:C.

(7) Funnel for B:C.

(8) A closed receptacle for dry chemical.

(9) Fifty pound scale.

(10) A scale for cartridges.

(11) 'O' Ring lubricant.

(12) Tag hole Punch.

(13) Approved seals maximum fourteen (14) pound break strength.

(14) A copy of NFPA Standard 10 (1994 Edition), statute, and these rules.

(15) Minimum parts:

(A) A supply of O rings needed for standard service.

(B) A supply of valve stems for standard service.

(C) A supply of nozzles for standard extinguishers.

(D) Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

(E) Carry handles and replacement handles for extinguishers.

(F) Rivets or steel roll pins for handles and levers.

(G) Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

(H) Inspection light for cylinders.

(I) A variety of pull pins to secure handle.

(J) Carbon Dioxide continuity tester for hoses.

(K) Halon closed recovery system.

(b) Type 3 License:

(1) Approved testing pump.

(2) Test cage or suitable safety barrier.

(3) Approved hydro test labels.

(4) Hydrostatic test adapters or approved equal.

(5) Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

(c) Type 2 License:

Current registration number from the Department of Transportation, verifying the concern as a qualified cylinder requalification facility under the provision of Section 173.34 of Title 49, Code of Federal Regulations, 49 CFR shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM.

(d) Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

3.22 Records.

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-4. Certificates of Registration.

4.0 Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

4.1 Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

4.2 Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

4.3 Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. Examinations will be given according to the following schedule:

(a) On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

(b) Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.4 Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.5 Original and Renewal Valid Date.

Original certificates of registration shall be valid from the date of issuance through December 31st of the year in which issued. Thereafter, each certificate of registration shall be renewed annually and renewals thereof shall be valid from January 1st through December 31st. Original certificates purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Certificates of registration issued on or after November 1st will be valid through December 31st of the following year.

4.6 Renewal Date.

Application for renewal shall be made by January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

4.7 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.3 of these rules.

4.8 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.9 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

4.10 Type.

(a) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.11 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

4.12 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

4.13 Minimum Age.

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.14 Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(b) Regardless of the acts authorized to be performed by

a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

4.15 Contents of Examination.

(a) The examination required under the provisions of Section 3.14, shall include a written test of the applicant's knowledge of the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

(b) Examinations shall, in the opinion of the SFM, be compatible with the type of work to be performed by the applicant and with the equipment with which he will function.

(c) The written portion of the examination shall be divided into the following groups:

(1) Provisions relating to these Rules Governing Concerns Servicing Portable Fire Extinguishers.

(2) Hydrostatic testing of any D.O.T. (I.C.C.) listed fire extinguisher cylinders.

(3) Hydrostatic testing of dry chemical, halon, water, and water chemical type fire extinguishers.

(4) Service and maintain all types of extinguishers, excluding hydrostatic testing.

4.16 Right to Contest.

(a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

(c) The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Passing Grade.

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination shall be separately graded.

4.18 Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

4.19 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

4.20 Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-5. Seal of Registration.

5.0 Description.

The official seal of registration of the SFM shall consist of the following:

(a) The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

(1) The top portion of the outer ring shall have the wording "Utah State".

(2) The Bottom portion of the outer ring shall have the wording "Fire Marshal".

(b) Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

(c) Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

5.1 Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.2 Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

5.3 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

5.4 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-6. Service Tags.

6.1 Size and Color.

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

6.2 Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

6.3 Tag Information.

(a) Service tags shall bear the following information:

(1) Provisions of Section 6.7.

(2) Type of license.

(3) Approved Seal of Registration of the SFM.

(4) License registration "E" number.

(5) Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

(6) Signature of individual whose certificate of registration number appears on the tag.

(7) Concern's name.

(8) Concern's address.

(9) Type of service performed.

(10) Type of extinguisher serviced.

(11) Date service is performed.

(b) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

6.4 Legibility.

(a) The certificate of registration number required in

Section 6.3(5), and the signature required in Section 6.3(6), shall be printed or written distinctly.

(b) All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

6.5 Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five (5) years. ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

6.6 New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

6.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

6.8 Removal.

No person or persons shall remove a service tag, hydrostatic test, 6 year maintenance servicing, or internal pick-up tube label or marking, except when further service is performed. No person or persons shall deface, modify, or alter any service tag, hydrostatic test, 6 year maintenance servicing, or internal pick-up tube label attached to, or required to be attached to any portable fire extinguisher.

6.9 Restrictive Use.

(a) Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

(b) Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

(c) Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

(d) Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-7. Portable Fire Extinguisher Rated Classification Labels.

7.1 Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

7.2 Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-8. Amendments and Additions.

8.1 Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

8.2 Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

8.3 Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

8.4 New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

8.5 Class K Portable Fire Extinguishers

NFPA, Standard 10, Section 2-3.2 and Section 2-3.2.1, 1998 edition, is deleted and replaced with the following:

a. Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

b. Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use until July 1, 1999, and then shall be replaced with a Class K rated portable fire extinguisher.

R710-1-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

9.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement in the application.

(c) Refusal to allow inspection by the SFM, or his duly authorized deputies.

(d) The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

(e) The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to

conduct the operations for which application is made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.19 of these rules.

(f) The person or applicant fails to place an internal tag or marking, on the pick-up tube of any pressurized dry chemical extinguisher when the following occurs:

(i) re-charge;

(ii) 6 year maintenance; or

(iii) hydrostatic testing.

(g) The person or applicant refuses to take the examination required by Section 4.3 and Section 3.14 of these rules.

(h) The person or applicant has been convicted of any of the following:

(i) a violation of the provisions of these rules;

(ii) a crime of violence or theft; or

(iii) any crime that bears upon the person or applicant's ability to perform their functions and duties.

(i) The person servicing portable fire extinguishers does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

(j) The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

9.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

9.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

9.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-10. Fees.

10.1 Fee Schedule.

(a) Licenses and Certificates of Registration (new and renewals):

TABLE

(1)	License (any type)	$200.00
(2)	Branch office license	100.00
(3)	Certificate of registration	30.00
(4)	Duplicate	30.00
(5)	License Transfer	50.00
(6)	Application for exemption	100.00

(b) Examinations:

TABLE

(1)	Initial examination	20.00
(2)	Re-examination	15.00
(3)	Five year examination	20.00

10.2 Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

10.3 Late Renewal Fees.

(a) Any license or certificate of registration not renewed before January 1st will be subject to an additional fee equal to 10% of the required inspection fee.

(b) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers
September 1, 1998 **53-7-204**
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. Introduction.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-3-3, et seq.

1.2 Uniform Building Code (UBC), Volume 1, 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.2.1 Uniform Building Code (UBC), Volume 1, Appendix Chapter 3, Division IV - Requirements for Group R, Division 4 Occupancies, 1997 edition, as referenced in Statewide Amendment, Uniform Building Code, effective March 5, 1992.

1.3 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-3-2. Definitions.

"Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the assistance of another person.

"Assisted Living Facility" means:

(1) a Type I Assisted Living Facility, which is a residential facility that provides a protected living arrangement for ambulatory, nonrestrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(2) a Type II Assisted Living Facility, which is a residential facility that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

(3) Assisted Living Facilities shall be classified as follows:

(a) "Type I and II Limited Capacity Assisted Living Facility" means a facility accommodating not more than five residents, excluding staff.

(b) "Type I and II Small Assisted Living Facility" means a facility accommodating more than five and not more than sixteen residents, excluding staff.

(c) "Type I and II Large Assisted Living Facility" means a facility accommodating more than sixteen residents.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

"Board" means Utah Fire Prevention Board.

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

"Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

"Semi-independent" means a person who is:

A. physically disabled but able to direct his or her own care; or

B. cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UFC" means Uniform Fire Code.

R710-3-3. Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans, provide staff training in the usage of all emergency equipment to include portable fire extinguishers, hood systems, fire alarms, and fire drills, in addition to those requirements in the UFC, Article 13.

3.2 Type I Assisted Living Facilities

3.2.1 Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with UBC, Group R, Division 3 Occupancies; and maintained in accordance with the UBC and UFC.

3.2.2 Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the main floor only, unless an outside exit leading to the ground level is provided from any upper or lower level.

3.2.4 In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in UBC, Chapter 3, Section 310.4.

3.2.5 In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.2.6 Type I Small Assisted Living Facilities shall be constructed in accordance with UBC, Appendix Chapter 3, Division IV - Requirements for Group R, Division 4 Occupancies; and maintained in accordance with the UBC and UFC.

3.2.7 Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type I Large Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3 Type II Assisted Living Facilities

3.3.1 Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with UBC, Appendix Chapter 3, Division IV, Requirements for Group R, Division 4 Occupancies; and maintained in accordance with the UBC and UFC.

3.3.2 Type II Limited Capacity Assisted Living Facilities

shall have an approved automatic fire extinguishing system installed in compliance with the UBC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type II Small Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3.4 Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.5 Type II Large Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3.6 Type II Large Assisted Living Facilities shall have a minimum corridor width of six feet.

R710-3-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-6. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: assisted living facilities
September 1, 1998 **53-7-204**
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.

R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used, or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, residential health care facility, children's home or institution, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 1997 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 12 - New Health Care Occupancies; Chapter 13 - Existing Health Care Occupancies; Chapter 14 - New Detention and Correctional Occupancies; Chapter 15 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, with all appendices, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.4 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), 1996 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.5 Uniform Building Code (UBC), Volume 1, 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

The following UBC appendix chapter is adopted:

Chapter 3 - Division IV, Requirements for Group R, Division 4 Occupancies.

1.6 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-4-3, et seq.

The following UFC appendix chapters are adopted:

(a) Appendix I-C Stairway Identification.

(b) Appendix III-C Inspection, Testing and Maintenance of Water Based Fire Protection Systems.

(c) Appendix IV-A Interior Floor Finish.

(d) Appendix VI-A Hazardous Materials Classifications.

(e) Appendix VI-E Reference Tables from the Uniform Building Code.

1.7 Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as published by the International Fire Code Institute (IFCI).

The following UFCS standards are amended as follows:

(a) UFCS 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, 1998 edition.

(b) UFCS 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, 1996 edition.

(c) UFCS 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, 1995 edition.

(d) UFCS 79-1, Foam Fire Protection Systems is amended to adopt NFPA, Standard 11, 1994 edition.

(e) UFCS 82-1, Liquefied Petroleum Gas Storage is amended to adopt NFPA, Standard 58, 1995 edition.

1.8 Uniform Mechanical Code (UMC), 1994 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.9 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

"AWWA" means American Water Works Association.

"Board" means Utah Fire Prevention Board.

"Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

"Fire Chief or Chief of the Department" means the AHJ.

"Fire Marshal" means the AHJ.

"Fire Department" means the AHJ.

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

"LSC" means Life Safety Code.

"NEC" means National Electric Code.

"NFPA" means National Fire Protection Association.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UCA" means Utah State Code Annotated 1953 as amended.

"UFC" means Uniform Fire Code.

"UFCS" means Uniform Fire Code Standards.

"UMC" means Uniform Mechanical Code.

R710-4-3. Amendments and Additions.

3.0 The following amendments and additions are hereby adopted for those buildings under the jurisdiction of the State Fire Marshal:

3.1 Door Closures

3.1.1 UFC, Article 11, Section 1111.2.2 Operation. Add the following Exception. In Group E Occupancies, Divisions 1 and 2, the door closures may be of the friction hold-open type on classrooms only.

3.2 Dumpsters

3.2.1 UFC, Article 11, Section 1103.2.2, with reference to

Group E Occupancies, is amended to add the following requirement:

Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet) or greater shall not be stored in buildings or placed within 20 feet of combustible walls, openings or combustible roof eave lines.

3.3 Fire Alarm Systems

3.3.1 General Provisions

The following rules pertain to newly installed systems or changes made to existing systems, except where noted:

(a) Presignal feature type systems are prohibited, except in I-3 Occupancies.

(b) Fire alarm system designs submitted to the AHJ, shall include complete floor plans showing location of all devices, occupancy use of each room, schematic wiring diagrams, battery calculations, and any other items deemed necessary.

3.3.2 Required Installations

(a) Fire alarm systems shall be provided as required in UFC, Article 10, Section 1007, and LSC Chapters as adopted, and in other rules promulgated by the Board.

(b) All state-owned buildings, college and university buildings, other than institutional, with an occupant load of one hundred (100) or more, all schools with an occupant load of fifty (50) or more, shall have an approved fire alarm system with the following features:

(1) Products-of-combustion (smoke) detectors installed throughout all corridors and common areas of egress at the maximum prescribed spacing of thirty feet on center, and no more than fifteen feet from the walls.

(2) In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.

(3) Manual alarm initiating devices shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

(4) The fire alarm system shall be connected to a proprietary panel, where provided within the complex.

3.3.3 Main Panel

(a) An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

(b) The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.4 System Wiring

(a) System Wiring shall be in accordance with the following:

(1) The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

(2) The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

(3) Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

(b) All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

3.3.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

3.3.6 Fan Shut Down

(a) The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

(b) Duct detectors required by the UMC, shall be interconnected, and compatible with the fire alarm system.

3.3.7 Maintenance and Tests

The owner/administrator of each building shall insure maintenance and testing as required in UFC, Article 10, Section 1001.4 and 1001.5. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

3.4 Fireworks

3.4.1 UFC, Article 78, Section 7802.3 is amended to include the following Exception:

3. The use of fireworks for display and retail sales is allowed as set forth in the "Utah Fireworks Act", as adopted in Title 11, Chapter 3, Utah Code Annotated 1953.

3.5 Health Care Facilities

3.5.1 LSC Chapters 12 and 13 Sections 12-1.2.4 and 13-1.2.4 (Exiting Through Adjoining Occupancies) exception is deleted.

3.5.2 LSC Chapter 13, Section 13-3.6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

3.6 Hydrants, Fire

3.6.1 The fire department connection on automatic fire sprinkler and standpipe systems shall be located a reasonable distance as approved by the AHJ.

3.7 Fire Sprinklers

3.7.1 Class 1 and Class 2 fire protection systems, as defined in AWWA, M14, Second Edition, "Recommended Practice for Backflow Prevention and Cross-Connection Control," shall be provided with a listed alarm check valve with standard trim.

3.7.2 Antifreeze systems installed in Class 1 and Class 2 fire protection systems shall be installed as required in NFPA, Standard 13, and a backflow preventing device shall be installed as required in the Uniform Plumbing Code.

3.8 Water Supply Analysis

3.8.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.8.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.8.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-7-2.1.

3.9 Fire Drills

3.9.1 UFC, Article 13, Section 1303.3.3.2(1)is amended to include the additional Exception:

2. A fire drill in secondary schools shall be conducted at least every two months, to a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, public buildings
September 1, 1998 53-7-204
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.
R710-6. Liquefied Petroleum Gas Rules.
R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, Standard for the Storage and Handling of Liquefied Petroleum Gases, 1995 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 1996 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 501C, Standard on Recreational Vehicles, 1996 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 Uniform Fire Code (UFC), Volume 1, Article 82, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.5 Uniform Fire Code (UFC), Volume 2, Uniform Fire Code Standards (UFCS), No. 82-1 and No. 82-2, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.6 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.7 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.8 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.9 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

"Basement" means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

"Board" means the Liquefied Petroleum Gas Board.

"Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

"Division" means the Division of the State Fire Marshal.

"Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

"First Story" means the lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet below grade, as defined herein, for more than 50 percent of the total perimeter, or not more than 8 feet below grade, as defined herein, at any point.

"IFCI" means International Fire Code Institute.

"License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

"LPG" means Liquefied Petroleum Gas.

"LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

"NFPA" means the National Fire Protection Association.

"Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

"Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

"Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such useable or unused under-floor space shall be considered a story.

"UCA" means Utah State Code Annotated 1953 as amended.

"UFC" means Uniform Fire Code.

"UFCS" means Uniform Fire Code Standards.

R710-6-3. Licensing.

3.1 Type of license.

Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

Class IV: Those businesses listed below:

(a) Dispensers

(b) Sale of containers greater than 96 pounds water capacity.

(c) Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made in writing, on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

(a) The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

(b) Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

(1) Carburetion

(2) Dispenser

(3) HVAC/Plumber

(4) Recreational Vehicle Service

(5) Serviceman

(6) Transportation and Delivery

4.4 Initial Examinations.

(a) The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

(b) The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

(c) To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

(d) Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

(e) As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the

work to be performed by the applicant, shall have the requirement for initial examination waived, after approriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made in writing on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules.

(a) The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

(b) The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

(c) The certificate holder is responsible to complete the 25 question re-examination and return it to the Division in sufficient time to renew.

(d) The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that he is authorized, pursuant to Article 5, to deny any original LPG certificate. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of these rules to an applicant for an original LPG certificate which has been denied by the Division.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

(a) Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

(c) It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

(a) The name and address of the applicant.

(b) The physical description of applicant.

(c) The signature of the LP Gas Board Chairman.

(d) The date of issuance.

(e) The expiration date.

(f) Type of service the person is qualified to perform.

(g) Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

(a) No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

(b) A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(c) Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

(d) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

(a) Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

(c) The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

(d) The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed ninety (90) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The

employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement in the application, whether original or renewal.

(c) Refusal to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

(d) The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

(e) The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

(f) The person or applicant refuses to take the examination.

(g) The person or applicant has been convicted of any of the following:

(i) a violation of the provisions of these rules;

(ii) a crime of violence or theft; or

(iii) a crime that bears upon the person or applicant's ability to perform their functions and duties.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-6-6. Fees.

6.1 Fee Schedule.

TABLE

(a)	License and LPG Certificates (new and renewals):	
(1)	License	
(A)	Class I	$300.00
(B)	Class II	300.00
(C)	Class III	70.00
(D)	Class IV	100.00
(2)	Branch office license	225.00
(3)	LPG Certificate	30.00
(4)	LPG Certificate (Dispenser--Class B)	10.00
(5)	Duplicate	30.00
(b)	Examinations:	
(1)	Initial examination	20.00
(2)	Re-examination	20.00
(3)	Five year examination	20.00
(c)	Plan Reviews:	
(1)	More than 5000 water gallons of LPG	90.00
(2)	5,000 water gallons or less of LPG	45.00
(d)	Special Inspections.	
(1)	Per hour of inspection (charged in half hour increments with part half hours charged as full half hours).	30.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

(a) Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

(b) When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

R710-6-7. Board Procedures.

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that

particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-8. Amendments and Additions.

8.1 The following amendments and additions to the codes and standards adopted to regulate LPG in section 1.1, are hereby adopted:

8.2 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping.

(a) All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

(b) If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

(c) The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

(d) The inspection records shall be available to be inspected on a regular basis by the Division.

8.3 UFC Amendments:

(a) UFC, Section 8201 - Scope. On line 4 after the wording "Appendix B." insert the following: "Also reference NFPA Standard 58, 1995 edition, as amended by the Board".

(b) UFC, Section 8202.1 Permits and Plans. On line 2 after the word "see" replace "Section 105, Permit 1.1" with "the adopted LPG rules".

(c) UFC, Section 8202.2 - Records., is deleted.

(d) UFC, Section 8203.1 - General. Starting on line 2, after the wording "installed in accordance with" insert "NFPA Standard 58, 1995 edition, NFPA Standard 54, 1996 edition, and".

(e) UFC, Section 8203.3 Location of Equipment and Piping is amended to add the following Exception:

Exception: For locations of equipment and piping below grade, refer to NFPA Standard 54, 1996 edition and the following amendments:

(1) New LP Gas systems may be installed in basements with not more than 6,000 square foot per floor, and not classified as Group E (educational), H (hazardous), or I (institutional) occupancies as defined in the Uniform Building Code.

(2) All new LP Gas systems installed in basements shall be installed as required in NFPA Standards 54 and 58, and the requirements listed in 8.2(e)(4). All new LP Gas systems installed in basements shall be inspected before occupancy by a certified LP Gas Serviceman, and may be inspected by the Building Official or his representative, or the Building Official may accept the serviceman's inspection.

(3) All LP Gas systems installed in basements and existing below-grade systems shall be inspected by a certified LP Gas serviceman every five (5) years for compliance with NFPA Standards 54 and 58, and the requirements listed in 8.2(e)(4). Existing below-grade systems shall have until April 15, 1999, to be in compliance with NFPA Standards 54 and 58, and the requirements listed in 8.2(e)(4).

(4) All new and existing LP Gas systems, installed in basements or below-grade, shall in addition to the requirements listed in NFPA Standards 54 and 58, meet the following:

(A) An approved and listed audible LP Gas detector shall be installed in accordance with manufacture recommendations.

(B) The entire gas system shall be pressure tested and inspected for leaks by a certified LP Gas Serviceman as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

(C) All tanks, piping, regulators, gauges, connectors, valves, vents, thermostats, pilots, burners and appliance controls, shall be inspected by a certified LP Gas Serviceman for proper installation and function.

(D) After inspection and successful completion of all code requirements, a weatherproof tag shall be attached to the tank and if possible placed under the inspection cover. The tag shall indicate the name of the inspecting company, license number of the company, name and certification number of inspector, and the date of inspection.

(E) All companies shall keep on file written paperwork indicating the name and address of the customer, date of inspection, tank information, inspector and certification number, and corrections made to the system. A copy of this inspection shall be left with the customer.

(5) If a system is changed, modified or repaired, before the expiration of the five (5) year tag, the entire system shall be reinspected to meet the requirements listed in 8.2(e)(3).

(6) The inspecting company may be allowed to charge a reasonable fee for the above required inspection, and those fees may be monitored by the Board.

(f) UFC, Section 8204.1 General. On line 3 delete "and subject to the approval of the chief." and replace it with "as amended by the Board".

(g) UFC, Section 8204.2 on line 4 after the word "areas" insert "as determined by the Board".

(h) UFC, Section 8208 - Smoking and Other Sources of Ignition. On line 1 replace "chief" with "enforcing authority".

(i) UFC, Section 8212.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1, 1995 edition.

8.4 UFCS 82-1 Amendments:

(a) The amendments listed in Part I, Section 82.101 are deleted.

(b) The 1989 edition of NFPA, Standard 58 listed in Part II is deleted and replaced with the 1995 edition of NFPA, Standard 58.

8.5 NFPA Standard 58 (1995 edition) Amendments:

NFPA Standard 58, Sections 2-4.3(c)(1) and (2) are deleted and amended to read as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

TABLE

(a)	Concern failure to license	$210.00 to 900.00
(b)	Person failure to obtain LPG Certificate	$30.00 to 90.00
(c)	Failure of concern to obtain LPG Certificate for employees who dispense LPG	$210.00 to 900.00
(d)	Concern doing business under improper class	$140.00 to 600.00
(e)	Failure to notify SFM of change of address	$60.00
(f)	Violation of the adopted Statute or Rules	$210.00 to 900.00

9.2 Rationale.

(a) Double the fee plus the cost of the license.

(b) Double the fee plus the cost of the certificate.

(c) Double the fee plus the cost of the license.

(d) Double the fee.

(e) Based on two hours of inspection fee at $30.00 per hour.

(f) Triple the fee.

KEY: liquefied petroleum gas
September 1, 1998 53-7-305
Notice of Continuation October 25, 1996

R710. Public Safety, Fire Marshal.

R710-7. Concerns Servicing Automatic Fire Suppression Systems.

R710-7-1. Adoption of Codes.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide regulation to those concerns that service Automatic Fire Suppression Systems. These rules do not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems, 1998 edition; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 1997 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems, 1998 edition; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems, 1998 edition; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 1994 edition; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 1996 edition. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless:

(a) It complies with these rules.

(b) It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

(c) Automatic fire suppression systems using dry chemical, manufactured before November 1994, shall not be installed where grease laden vapors are produced. Systems in use prior to November 1994, are allowed to remain in service in the original installation.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-7-2. Definitions.

"Annual" means a period of one year or 365 days.

"Board" means Utah Fire Prevention Board.

"Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

"Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

"Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

"Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

"Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

"Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

"License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

"N.F.P.A." means National Fire Protection Association.

"Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

"Service" means a complete check of an automatic fire suppression system which includes the required service procedures set forth by a manufacturer of an approved system or the minimum service requirements as provided as set forth in adopted N.F.P.A. standards.

"System" means an Automatic Fire Suppression System.

"SFM" means Utah State Fire Marshal.

"UCA" means Utah State Code Annotated, 1953 as amended.

R710-7-3. Licensing.

3.0 License Required

No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.1 Type of License

(a) Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

(b) Licenses shall be any one, or combination of the following:

(1) Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

(2) Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

3.2 Application

(a) Application for a license to conduct business as an automatic fire suppression system concern, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

(b) As of January 1, 1999, the application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in

effect for any reason.

3.3 Signature of Applicant

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.4 Equipment Inspection

The applicant shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained.

3.5 Issuance and Posting of License

Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license. Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

3.6 Original, Valid Date

Original license shall be valid from the date of issuance through December 31 of the year in which issued. Thereafter, each license shall be renewed annually and renewals shall be valid from January 1 through December 31. Original licenses purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee. Licenses issued on or after November 1 will be valid through December 31 of the following year.

3.7 Renewal, Valid Date

Application for renewal shall be made before January 1 of each year on forms provided by the SFM. The failure to renew the license will cause the license to become invalid on January 1 of the next year.

3.8 Duplicate License

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

3.9 Refusal to Renew

SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

3.10 Change of Address

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of address or location of business.

3.11 Under Another Name

No licensee shall conduct the licensed business under a name other than the name or names which appears on the license.

3.12 Hiring and Termination

Every licensed concern shall, within thirty (30) days of employment or termination of an employee or contracted agent shall notify the SFM of the name, address, and certification number of that person.

3.13 Minimum Age

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.14 Employer Responsibility

Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

3.15 Restrictive Use

No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager. No license shall grant authorization to enforce the Uniform Fire Code or these rules.

3.16 Non-Transferable

No license issued pursuant to this section shall be transferred from one concern to another.

3.17 Registration Number

Every license shall be identified by a number, delineated as H-(number). Such number may only be transferred from one concern to another when approved by the SFM.

3.18 Minimum Materials and Equipment Required

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

(a) Calibrated scales with ability to:

(1) Weigh gas cartridges to within 1/4 ounce of manufacturers specifications.

(2) Weigh cylinders accurately for systems being serviced.

(b) Nitrogen Pressure Filling Equipment

(1) Nitrogen Supply

(2) Pressure Regulator - 750 p.s.i. minimum

(3) Filling Adapters

(c) Dry Chemical Systems

(1) Extinguishing agents, compatible with systems serviced

(2) Fusible links

(3) Safety pins

(4) An assortment of gaskets and "O" Rings compatible with systems serviced

(5) Gas cartridges as required according to manufacture's specifications

(6) Current reference manuals, to include manufacture's service manuals

(7) Cocking or Lockout Tool

(d) Halon and CO2 Systems

(1) Have access to, or meet the requirements for a U.L. approved filling station.

(2) Have available in inventory, or have immediate access to, detectors compatible with systems serviced.

(3) Calibration equipment such as electrical testers and detector testers.

(4) Control panel components

(5) Release valves

(6) Current reference manuals

This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

3.19 Records

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall be made available to the SFM, or authorized deputies, upon request. These records shall include the following:

(1) The name and address of all serviced locations

(2) Type of service performed

(3) Date and name of person performing the work

R710-7-4. Certificates of Registration.

4.0 Required Certificates of Registration

No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts.

4.1 Application

Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM. The application shall be signed by the applicant.

4.2 Examination

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems. Examinations will be given according to the following schedule:

(a) On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment will be made to take an examination at least 24 hours in advance of the examination date.

(b) Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.3 Examination - Passing Grade

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken.

4.4 Contents of Examination

The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.5 Right to Contest

Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination. Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination. The decision of the SFM shall be final.

4.6 Issuance

Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.7 Original and Renewal Valid Date

Original certificates of registration will be valid from the date of issuance through December 31 of the year in which issued. Thereafter, each certificate of registration will be renewed annually and renewals will be valid from January 1 through December 31. Original certificates purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee. The failure to renew a certificate of registration will cause the certificate of registration to become invalid of January 1 of the next year. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems. Original certificates of registration issued on or after November 1 will be valid through December 31 of the following year.

4.8 Renewal Date

Application for renewal will be made before January 1st of each year. Application for renewal will be made in writing on forms provided by the SFM.

4.9 Re-examination

Every holder of a valid certificate of registration will take a re-examination every five (5) years, from the date of original certificate, to comply with the provisions of Section 4.2 of these rules.

4.10 Refusal to Renew

The SFM may refuse to renew any certificate of registration for the reasons that is authorized pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.11 Inspection

The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

4.12 Change of Address

Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within thirty (30) days of such change. Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

4.13 Duplicate

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

4.14 Minimum Age

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.15 Restrictive Use

(a) No certificate of registration will constitute authorization for any person to enter upon or into any property or building.

(b) No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the Uniform Fire Code.

(c) Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

4.16 Non-Transferable

Certificates of registration will not be transferable. Individual certificates of registration will be carried by the person to whom issued.

4.17 Limited Issuance

No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

4.18 New Employees

New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment.

4.19 Certificate Identification

Every certificate will be identified by a number, delineated as HE-(number).

R710-7-5. Service Tags and Labels.

5.0 Size and Color

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width. Tags may be any color except red.

5.1 Attaching Tag

One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected

5.2 Signature and Certificate Number

(a) The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

(b) All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

5.3 New Tag

A new service tag will be attached to a properly functioning system each time service is performed. A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section 5.8.

5.4 Tag Warning

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

5.5 Removal

No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

5.6 Service Tag Information

All service tags shall be designed as required by the SFM.

5.7 Six Year Maintenance and Hydrostatic Test Labels

(a) Six year maintenance and hydrostatic test labels will be affixed by a heatless process. The labels will be applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing.

(b) Six year maintenance and hydrostatic test labels shall be durable to withstand the effects of weather and adverse conditions.

(c) Six year maintenance and hydrostatic test labels will be designed as shown below:

EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL

5.8 Non-Compliance Tags

(a) Non-compliance tags will be affixed to any system failing to meet service specifications and will be placed in a conspicuous location on that system.

(b) Non-compliance tags shall be red in color.

(c) A system shall receive a non-compliance tag, when the system fails to fully comply with manufactures specifications or these rules.

(d) After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative. The service person shall also furnish a copy of the service report to the authority having jurisdiction.

(e) Non-compliance tags will be designed as required by the SFM.

R710-7-6. Requirements For All Approved Systems.

6.0 General

For the purpose of these rules, every automatic fire suppression system required by any governmental statute, ordinance, or rule, will conform to the provisions of this section.

6.1 Service

(a) Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

(b) When fusible links are a required portion of the system, fusible links will be replaced yearly or as required by the manufacturer of the system.

(c) Fusible links will show the date when installed by year only.

(d) Fusible links will not be used after February 1 of the next year showing a previous year's date.

6.2 Interchanging of Parts

Interchanging of parts from different manufactured systems is prohibited. Parts shall be specifically listed and compatible for use with the designed system.

6.3 Return of parts

All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service. Parts that are required to be returned to the manufacturer due to warranty are exempt.

6.4 Restricted Service

Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test. A non-compliance tag will not be accepted to meet the requirements of this section.

6.5 Service

At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules. Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions. Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person

employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement on the application.

(c) Refusal to allow inspection by the SFM, his duly authorized deputies.

(d) The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

(e) The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.2 of these rules.

(f) The person or applicant has been convicted of any of the following:

(i) a violation of the provisions of these rules;

(ii) a crime of violence or theft; or

(iii) any crime that bears upon the person or applicant's ability to perform their functions and duties.

(g) The person servicing automatic fire suppression systems does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

(h) The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

7.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-7-9. Fees.

9.0 Fee Schedule

(a) Licenses (New and Renewals)

(1) Type H1 (Marketing and Installation) . . . $200.00

If the concern currently is licensed to service portable fire extinguishers the fee is $100.00.

(2) Type H2 (Service Only) $100.00

If the concern currently is licensed to service portable fire extinguishers the fee is $50.00.

(3) Branch Office License. $100.00

(b) Certificates of Registration (New and Renewals)

(1) Certificate of Registration. $30.00

If the individual currently is certified as a portable fire extinguisher technician the fee is $10.00

(c) License Transfer $50.00

(d) Examinations

(1) Initial Examination. $20.00

(2) Re-Examination $15.00

(3) Five (5) Year Examination. $20.00

9.1 Payment of Fees

The required fee will accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

9.2 Late Renewal Fees

(a) Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.

(b) When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
September 1, 1998 **53-7-204**
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.
R710-8. Day Care Rules.
R710-8-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 1997 edition, except as amended by provisions listed in R710-8-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 30, New Day Care Occupancies, Sections 30-6 and 30-7 - Day Care Homes; Chapter 31, Existing Day Care Occupancies, Sections 31-6 and 31-7 - Day Care Homes; and other sections referenced within and pertaining to these chapters only.

1.2 Uniform Building Code (UBC), 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.2.1 Group Day Care units shall also apply R156-56-20, Amendments to the UBC, Chapter 3, Section 305.1, Division 3, in carrying out the purposes of this Rule.

1.3 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

"Board" means Utah Fire Prevention Board.

"Client" means a child or adult receiving care from other than a parent, relative or guardian.

"Day Care" means any building or portion thereof, where clients receive care, maintenance, and supervision for less than 24 hours per day and which are not classified in the Uniform Building Code as E-1 or E-2 occupancies.

"Day Care Center" means care for thirteen or more clients.

"Family Day Care" means a service of providing care for not more than six clients listed in the following two groups:

a. "A" means not less than one and not more than three clients. The unit will be unlicensed, unregulated, and exempt.

b. "B" means not less than four and not more than six clients. The unit shall be licensed and regulated by regional offices of the Department of Human Services.

"Group Day Care" means a service of providing care for not less than seven and not more than twelve clients.

"ICBO" means International Conference of Building Officials.

"LSC" means Life Safety Code.

"NFPA" means National Fire Protection Association.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

R710-8-3. Amendments and Additions.

3.1 Family Day Care units shall comply with the requirements of NFPA, Standard 101, Life Safety Code (LSC), Chapter 30, Sections 30-6 and 30-7, and Chapter 31, Sections 31-6 and 31-7, where applicable, and the R-3 requirements of the Uniform Building Code. Section 31-1.1.2 of NFPA, Standard 101, Life Safety Code, 1997 edition, and all other sections that reference staff-to-client ratios, is deleted with reference to Family Day Care units, and is replaced with R710-8-3.8.

3.2 Group Day Care units shall comply with the Uniform Building Code Statewide Amendment for Group Day Care and the R-3 requirements of the Uniform Building Code.

3.3 Day Care Centers shall comply with the E-3 requirements of the Uniform Building Code.

3.4 Places of religious worship shall not be required to meet the provisions of this Rule in order to operate a nursery while religious services are being held in the building.

3.5 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

3.6 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

3.7 Fire drills shall be conducted in Family and Group Day Care units quarterly, and shall include the complete evacuation from the building of all clients and staff. Fire Drills in Day Care Centers shall be completed as required under Group E Occupancies.

3.8 The Authority Having Jurisdiction shall insure at each inspection there is sufficient staff to client ratios to allow safe and orderly evacuation in case of fire.

3.9 Infants shall not be housed in basements or above the first story unless permitted by the Uniform Building Code or the Life Safety Code.

R710-8-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-8-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

R710-8-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after

receiving the final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, day care
September 1, 1998 53-7-204
Notice of Continuation May 2, 1997

R710. Public Safety, Fire Marshal.

R710-9. Rules Pursuant to the Utah Fire Prevention Law.

R710-9-1. Title and Authority.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

R710-9-2. Definitions.

"Academy" means Utah Fire and Rescue Academy.

"Board" means Utah Fire Prevention Board.

"Council" means Fire Service Standards and Training Council.

"Director" means the Director of the Utah Fire and Rescue Academy.

"Division" means State Fire Marshal.

"Facilitator" means Fire Academy Curriculum Facilitator.

"Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

"LFA" means Local Fire Authority

"NFPA" means National Fire Protection Association.

"Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

"SFM" means State Fire Marshal.

"UCA" means Utah Code Annotated, 1953.

"UFC" means Uniform Fire Code.

"UFCS" means Uniform Fire Code Standards.

R710-9-3. Specific Editions of the Fire Code and Standards.

3.1 The Uniform Fire Code (UFC), Volume 1, 1997 edition, excluding appendices, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference as the state fire code, for the safeguarding of life and property from the hazards of fire and explosion, except as amended by provisions listed in R710-9-6, et seq.

3.2 The Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference, as a set of standards that are specifically referred to within various sections of the UFC. The following Uniform Fire Code Standards are amended as follows:

a. Uniform Fire Code Standard 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

b. Uniform Fire Code Standard 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, 1996 edition.

c. Uniform Fire Code Standard 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, 1995 edition.

d. Uniform Fire Code Standard 79-1, Foam Fire-Protection Systems is amended to adopt NFPA, Standard 11, 1994 edition.

e. Uniform Fire Code Standard 82-1, Liquefied Petroleum Gas Storage and Use is amended to adopt NFPA, Standard 58, 1995 edition, except as amended by provisions listed in R710-9-6, et seq.

R710-9-4. Conduct of Board Meetings.

4.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

4.2 A quorum shall be required to approve any action of the Board.

4.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

4.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

4.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

4.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

4.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-5. Procedures to Amend the Uniform Fire Code.

5.1 All requests for amendments which would be less restrictive than the adopted edition of the UFC, shall be submitted to the division to be presented to the Board.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next meeting of the Board.

5.3 Upon presentation of a proposed amendment, the Board may:

a. make a recommendation to accept the proposed amendment as submitted or as modified by the Board;

b. make a recommendation to reject adoption of the proposed amendment;

c. make a recommendation to submit the proposed amendment to an ad hoc committee or formal organization for further study; or

d. make a recommendation that the proposed amendment be returned to the requesting agency, accompanied by Board comments, for the purpose of reconsidering and resubmitting the proposed amendment with modification.

5.4 The ad hoc committee or organization assigned a proposed amendment shall report its recommendation to the Board within forty-five (45) days after the proposed amendment is submitted to that committee or organization.

5.5 The Board shall make a final decision on the proposed

amendment at the next Board meeting.

5.6 The Board may reconsider any request for amendment, or reverse or modify any previous action by majority vote.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

6.1 Class K Portable Fire Extinguishers

UFC, Section 1006.2.7, 1997 edition, and NFPA, Standard 10, Section 2-3.2, 1998 edition, is deleted and replaced with the following:

a. Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

b. Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use until July 1, 1999, and then shall be replaced with a Class K rated portable fire extinguisher.

6.2 Door Closures

UFC, Section 1111.2.2 Operation. Add the following Exception: In Group E Occupancies, Divisions 1 and 2, door closures may be of the friction hold-open type on classroom doors only.

6.3 Fireworks

UFC, Section 7802.1 is amended to include the following Exception: 4. The use of fireworks for display and retail sales is allowed as set forth in the "Utah Fireworks Act", as adopted in Title 11, Chapter 3, UCA.

6.4 Liquefied Petroleum Gas

UFC, Section 8212.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1, 1995 edition.

R710-9-7. Publications of Amendments to the Uniform Fire Code.

7.1 The division shall publish a list of amendments to the UFC, that have been granted by the Board.

7.2 The division shall make available to any person or agency copies of these amendments upon request, and may charge a reasonable fee for multiple requests from a person or agency in accordance with the provisions of UCA, Section 63-2.

R710-9-8. Local Ordinances.

8.1 The legislative body of a political subdivision shall provide to the Board within forty-five (45) days after passage, a copy of any ordinances enacted that are more restrictive than the adopted fire code.

8.2 The division shall maintain an indexed copy of these ordinances for the Board.

8.3 The division shall publish an indexed list of these ordinances that have been made by political subdivisions.

8.4 The division shall make available to any person or agency copies of these ordinances upon request, and may charge a reasonable fee for multiple requests from a person or agency.

R710-9-9. Enforcement of the Rules of the State Fire Marshal.

9.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

9.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

9.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

9.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

(a) Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

(b) Public and private schools.

(c) Privately owned colleges and universities.

(d) Institutional occupancies as defined in Section 9-2 of this rule.

(e) Places of assembly as defined in Section 9-2 of this rule.

R710-9-10. Utah Fire and Rescue Academy, Fire Service Standards and Training Council, and Fire Academy Curriculum Facilitator.

10.1 The fire service training school shall be known as the Utah Fire and Rescue Academy.

10.2 There is created the Fire Service Standards and Training Council whose members shall be appointed by the Board for three year terms.

10.3 This Council shall serve in an advisory position to the Board on matters relating to fire service standards, training, and certification, and shall consist of the following members:

(a) a member of the Utah State Fire Chiefs Association.

(b) a member of the Utah State Firemen's Association.

(c) a member of the Utah Fire Marshal's Association.

(d) a specialist in hazardous materials representing the Hazardous Materials Institute.

(e) a fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

(f) a specialist in wildland fire suppression and prevention from the Utah Division of Sovereign Lands and Forestry.

(g) a representative from the International Association of Firefighters.

(h) a representative from the Utah Fire and Rescue Academy, Certification Council.

(i) a representative from the fire service that sits on the Utah State Emergency Medical Services Committee.

(j) a training officer.

10.4 The Council shall select one of its members to act in the position of chairman, and another member to act as vice chairman.

10.5 The majority of the Council shall be present to

constitute a quorum.

10.6 The Fire Academy Curriculum Facilitator, in cooperation with the Director of the Utah Fire and Rescue Academy shall report to the Board activities of the Academy, to include certification, development of programs, facilities, instruction for firefighters, and budgetary matters.

10.7 The Facilitator, in cooperation with the Director shall recommend to the Council new or expanded standards regarding education and training for the fire service.

10.8 The Facilitator, in cooperation with the Director shall recommend to the Council minimum certification standards required for firefighter, apparatus driver/pump operator, fire officer, instructor, inspector, investigator and hazardous materials responder.

10.9 The Council shall consider all subjects presented to them, and any other subjects assigned to them by the Board, and shall report their recommendations to the Board.

R710-9-11. Deputizing Persons to Act as Special Deputy State Fire Marshals.

11.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

11.2 Special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancies listed in the Fire Prevention Law.

11.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

11.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

11.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-12. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-13. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-14. Adjudicative Proceedings.

14.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

14.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the UFC, the appealing party may petition the Board to act as the board of appeals.

14.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

14.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

14.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

14.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

14.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

14.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, law
September 1, 1998 53-7-204
Notice of Continuation June 19, 1997

R746. Public Service Commission, Administration.
R746-344. Filing Requirements for Telephone Corporations With Less Than 5,000 Access Line Subscribers.
R746-344-1. Purpose.

A. Standard filing requirements are to provide uniformity of information for general rate case filings. The required information shall be filed on schedules, approved by the Commission, with the application for a change in rates. Providing this information with the rate application shall simplify proceedings, eliminate expense, and enhance the effectiveness of the fact finding process.

B. The standard filing requirements will provide factual information in an organized and referenced manner. This information may be used by the Commission, the Division of Public Utilities, or other interested parties to the case.

R746-344-2. Applicability.

The completion of the schedules approved by the Commission shall fulfill the requirement to provide necessary information to support proposed rate changes for telephone utilities with less than 5,000 subscriber access lines as set forth in Sections 54-7-12(7). The completed approved schedules shall be received by the Commission at least 30 days in advance of the proposed effective date of the rate changes.

R746-344-3. Hearing Process.

A. The Commission may, upon its own motion or upon complaint, set the case for hearing. If the case is set for hearing, the applicant may resubmit the schedules contained in the filing requirements as its primary exhibits. The Commission may require written direct testimony.

B. The applicant must provide notice of the hearing to its customers according to the Commission's Rules of Practice and Procedure, R746-100.

R746-344-4. Selection of a Test Year.

The applicant must base its rate change application on twelve months of data called a test year. The proposed test year can be historical, forecasted, or a combination of historical and forecasted months, not to exceed twelve months of forecasted data from the date the application is first received by the Commission.

R746-344-5. Forecasted Data.

A. The applicant shall provide the Commission with one copy of assumptions and the supporting work papers used to develop forecasted data. The applicant may be required by the Commission to provide updated actual data as it becomes available or to recalculate the forecasted data using justifiable alternative assumptions. An applicant which utilizes forecasted data for the test year, shall use an average rate base and capital structure to calculate the revenue deficiency.

B. The applicant may limit the change to known and measurable changes from the Federal Communications Commission's or state policies, if the revenue change is only required because of changes in those policies.

R746-344-6. Toll Revenues.

The applicant shall provide the Commission with a copy of the work papers and methodology used to develop the toll revenues included in the case.

R746-344-7. Audited Financial Statements.

If the applicant is audited by an independent certified public accounting firm, the applicant shall provide the Commission with one copy of the most recent audited financial statements, management letters and opinions prepared by that firm.

R746-344-8. Assistance Service.

Approved schedules will be self-explanatory. The applicant may contact the Division of Public Utilities for assistance if it does not understand the rate-making process for the schedules. A letter requesting assistance should be sent to:

Manager, Telecommunications Section
Division of Public Utilities
160 East 300 South Street
P.O. Box 45802
Salt Lake City, Utah 84145

KEY: public utilities, telecommunications, rules and procedures
1988 54-7-12(5)(6)
Notice of Continuation August 11, 1998

R746. Public Service Commission, Administration.
R746-345. Pole Attachments for Cable Television Companies.
R746-345-1. Authorization.

A. Authorization of Rules -- Section 54-4-13, provides that the Public Service Commission shall have the power to regulate the rates, terms and conditions by which a public utility can permit attachments to poles of the public utility by cable television companies.

B. Application of Rules -- These rules shall apply to each public utility that permits pole attachments to utility's poles by a cable television company.

R746-345-2. Tariffs and Contracts.

A. Public utilities will file tariffs with the Commission which provide rates, terms and conditions by which cable television pole attachments are permitted.

B. Tariffs will not become effective without the prior approval of the Commission.

C. When a utility uses a contract or agreement for execution of a pole attachment tariff and physical arrangements, that contract or agreement shall be directly referenced in the tariff. A copy of the general form of that contract or agreement will be provided to the Commission with the tariff filings. When a change is required to the content and form of a contract or agreement, where the change does not create a change to the tariff content, a revised copy of the contract or agreement will be filed with the Commission prior to the use or adoption by the public utility of the changed version.

R746-345-3. Pole Attachment Rates.

A. The rates for pole attachments will be based on a fair and reasonable portion of the utility's costs and expenses for the pole plant, or type of pole plant, investment jointly used with cable television companies.

B. The rates can include a fair and reasonable portion of a utility's common costs and expenses which may not be, or cannot be, directly assigned to the pole plant investments accounts.

C. The Commission will allow a public utility and the cable television companies to first negotiate tariff rates that they jointly agree are fair and reasonable. If agreement cannot be reached, the considerations that the Commission will use to judge what is fair and reasonable will include, but not be limited to, the following:

1. prevailing rates of other similar utility providers in Utah;

2. the utility's investment in pole plant used for attachments;

3. utility investment exclusion adjustments for crossarms and appurtenances;

4. incremental or carrying costs factors of pole plant;

5. poles space allocations for utility use versus television cable use.

R746-345-4. Tariff Rate Changes.

A. A public utility will not apply to the Commission for a change in a pole attachment rate as a part of a general company rate case.

B. A public utility will not apply for a change to the pole attachment rate prior to notifying the cable television companies then having attachments to the utility's poles. The rate change petition must provide a statement as to the cable television companies acceptance or rejection of the proposed change.

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation
1988 54-4-13
Notice of Continuation August 11, 1998

R746. Public Service Commission, Administration.
R746-404. Regulation of Promotional Programs of Electric and Gas Public Utilities.
R746-404-1. General Provisions.

An application for approval of promotional programs of the above utilities shall be filed with the Public Service Commission of Utah 30 days before they are to be put into effect. An application for a promotional program requires a docket number and must include a proposed tariff section. The application must also include a forecasted description of net ratepayer benefit. A copy of the application shall be sent by first class mail to the Division of Public Utilities, Committee of Consumer Services, utilities with competing programs and to any other party so designated by the Commission. Any affected person desiring a hearing should notify the Commission in writing within 20 days of the filing of the application. If no person requests a hearing or additional time to investigate, the application shall take effect at the expiration of 30 days from the time of filing. If a hearing or additional time is requested, an order by the Commission is needed for program approval.

R746-404-2.

"Promotional Programs" shall include all programs that allow, give, or promise cash, replacement allowances, discounts, rebates, appliances, equipment, or facilities to a person, firm, association, corporation, or group whatsoever, in consideration of the use of the service of the electric or gas public utility offering the inducement, excluding line extensions made pursuant to rules and orders on file with the Commission. Testing, research, or demonstration projects are not considered promotional programs for purposes of this rule.

R746-404-3.

The following standards shall apply to promotional programs:

A. No promotional program shall be implemented without prior Commission approval.

B. A promotional program may not vary the rates, charges, rules and regulations of the tariff pursuant to which service is rendered to the customer without prior Commission approval.

C. Each promotional program must be uniformly and contemporaneously available to all similarly situated customers.

D. The promotional program must be reasonably expected to promote the interests of the utility and its customers. There must be a demonstrable net ratepayer benefit.

KEY: public utilities, rules and procedure, programs
1988 54-4-1
Notice of Continuation August 11, 1998 54-4-7

R746. Public Service Commission, Administration.
R746-406. Advertising by Electric and Gas Utilities.
R746-406-1. General Provisions.

Except as provided in Subsection C, no electric or gas utility may recover from a person, other than shareholders or other owners of the utility, a direct or indirect expenditure by the utility for political, promotional or institutional advertising.

A. For the purposes of this rule:

1. The term "advertising" means the commercial use, by an electric or gas utility, of media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's consumers.

2. The term "political advertising" means advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to an issue of public dispute.

3. The term "promotional advertising" means advertising for the purpose of encouraging a person to select or use the service or additional service of an electric or gas utility or the selection or installation of an appliance or equipment designed to use that utility's service.

4. The term "institutional advertising" means advertising which is designed to create, enhance, or sustain an electric or gas utility's public image or good will with the general public or the utility's customer.

B. For the purposes of this rule, the terms "political advertising," "promotional advertising," and institutional advertising" do not include:

1. advertising which informs consumers how they can conserve energy, use energy wisely, or reduce peak demand for energy;

2. advertising required by law or regulation, including advertising required under Part 1 of Title II of the National Energy Conservation Policy Act;

3. advertising regarding service interruption, safety measures, or emergency conditions;

4. advertising concerning employment opportunities with the utility; or

5. an explanation of existing or proposed rate schedules, or notifications of hearing thereon, or

6. information about the availability of energy assistance programs.

C. Notwithstanding the foregoing provisions, expenditures relating to promotional and institutional advertising may be recovered in rates if the Commission has found, after due consideration in either a rate case or separate proceeding prior to implementation, that the advertising is in the public interest.

KEY: public utilities, advertising
1988 54-4-1
Notice of Continuation August 11, 1998 54-4-7

R746. Public Service Commission, Administration.
R746-500. Americans With Disabilities Act Complaint Procedure.
R746-500-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 54-1-1 and Section 63-46a-3(2) of the State Administrative Rulemaking Act. The Commission, pursuant to 28 CFR 35.107 adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

B. The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of that disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by a public entity.

R746-500-2. Definitions.

A. "ADA" means Americans With Disabilities Act.

B. "The ADA coordinator" means the Commission Secretary or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

1. Office of Planning and Budget;
2. Department of Human Resource Management;
3. Division of Risk Management;
4. Division of Facilities Construction Management; and
5. Office of the Attorney General.

D. "CFR" means Code of Federal Regulations, 1991 edition.

E. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of the impairment; or being regarded as having an impairment.

F. "Individual with a disability," hereafter individual, means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the Commission.

G. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

H. "Public Entity" means a state or local government; a department, agency, special purpose district, or other instrumentality of a state or local government.

R746-500-3. Filing of Complaints.

A. An individual who feels he has been discriminated against by or at the Commission may file a complaint by filing in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, a complaint alleging an act of discrimination occurring before the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. Each complaint shall be filed with the Commission's ADA coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

1. include the individual's name and address;
2. include the nature and extent of the individual's disability;
3. describe the Commission's alleged discriminatory action in sufficient detail to inform the public entity of the nature and date of the alleged violation;
4. describe the action and accommodation desired; and
5. be signed by the individual or by a legal representative of that individual.

D. A complaint filed on behalf of a class or third party shall describe or identify by name, if possible, the alleged victims of discrimination.

R746-500-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure that relevant facts are determined and documented. This may include gathering the information listed in Subsection 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Commission's staff in determining what action shall be taken on the complaint. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable within the Commission's budget and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R746-500-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing, or in another suitable format, what action shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability, in writing or other suitable format, why the decision is being delayed and what additional time is needed to reach a decision.

R746-500-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the chairman of the Commission or a designee other than the Commission's ADA coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review by the

Commission's chairman, or designee, of information, including information classified as private or controlled.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Commission chairman or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable and would require appropriation authority;

2. facility modifications; or

3. reclassification or reallocation in grade; the Commission chairman or designee shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or another format suitable to the individual.

G. If the Commission chairman or his designee is unable to reach a decision within the ten working day period the individual shall be notified, in writing or other suitable format, why the decision is being delayed and the additional time needed to reach a decision.

R746-500-7. Classification of Records.

The record of each complaint and appeal, and the written records produced or received as part of those actions, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, Commission chairman or their designee issues the decision, when a portion of the record that may pertain to the individual's medical condition shall remain classified private as defined under Section 63-2-302, or as controlled as defined in Section 63-2-303. Other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator, Commission chairman or designees shall be classified as public information.

R746-500-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures at 28 CFR Subpart F, beginning with Part 35.170; or other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

1993	**63-46a-3(2)**
Notice of Continuation August 5, 1998	**63-2-302**
	63-2-303
	63-2-304
	67-19-32

R850. School and Institutional Trust Lands, Administration.
R850-80. Sale of Trust Lands.
R850-80-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the terms and conditions for the sale of trust land.

R850-80-150. Planning.

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. Submission of the proposal for review by the Resource Development Coordinating Committee (RDCC);

2. Evaluation of and response to comments received through the RDCC process; and

3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-80-400(1).

R850-80-200. Sale of Trust Lands.

The agency may sell trust lands at no less than the fair market value if the agency determines that sale of the lands would be consistent with these rules and in the best interest of the trust beneficiaries.

R850-80-300. Sales Initiation Process.

The sales process may be initiated by:

1. The acceptance of a completed application form pursuant to R850-3-400; or,

2. A determination by the director that disposal of a parcel of property is timely and in the best interests of the trust land beneficiaries.

R850-80-400. Competitive Offering.

1. Upon acceptance of a lease or sale application, the agency shall solicit competing applications for lease, sale or exchange through commercially feasible means, including publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the sale is proposed. Certified notice that competing applications are being solicited shall be sent to lessees/permittees of record, adjoining lessees/permittees, and adjoining landowners at least 30 days prior to the selection of the successful applicant.

2. Notification and advertising shall include a description of the location of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.

3. The agency shall allow each applicant at least 20 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids shall be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200.

4. The director shall select the preferred applicant. If the preferred application is for a lease, it shall proceed through the process as outlined in R850-30-500(5). If the preferred application is for a sale, it shall proceed through the process outlined in R850-80-500. If the preferred application is for an exchange, it shall be processed pursuant to R850-90-300.

5. If any competing application received pursuant to R850-80-400 qualifies as a unit development lease as defined in R850-30-1100, the agency shall extend the sealed bid proposal deadline to 120 days.

R850-80-500. Sale Determination Procedures.

1. Preliminary Analysis

(a) The director may offer for sale, without further market analysis or sale determination, trust lands which have been:

i) designated for disposal in General Management Plans; or

ii) offered for sale within the previous three years but not purchased.

(b) The director may also offer for sale trust lands subject to market analysis and sale determination as provided in R850-80-500(2) and R850-80-500(3) when lands are not precluded from consideration under R850-80-500(1)(c).

(c) The director shall not further consider an application for sale when:

i) the sale results in an unmanageable or uneconomical parcel of trust land, or eliminates or materially restricts access to a remnant holding, without additional remuneration to cover any loss in value to the remnant parcel;

ii) the land has been, or is intended to be designated for development pursuant to R850-140;

iii) the director finds that withdrawing the parcel from public application to develop a marketing plan is justified by market trends or anticipated market demand in the area; or

iv) the director finds that the sale may lead to development which may have a negative effect on the value, developability or marketability of any remaining land holdings.

2. Market Analysis

(a) The agency shall contract for an appraisal in accordance with agency specifications for the purpose of estimating the fair market value of the trust land. The cost of the appraisal shall be borne by the successful purchaser of the parcel. The agency will determine the minimum acceptable selling price of the subject parcel using the appraisal, the data in (b) below and any other information which is deemed relevant. The minimum acceptable selling price of the parcel, as determined by the agency, shall be provided protected records status pursuant to Section 63-2-304(1) or 63-2-304(7) until the sale is consummated, unless otherwise ordered by the director.

(b) The agency shall conduct an economic analysis of the proposal, which shall include:

i) appraisal;

ii) real estate trends;

iii) market demand;

iv) opportunity costs including potential for appreciation; and

v) associated management costs of retention.

3. Sale Determination

If the market analysis conducted pursuant to R850-80-

500(2) above indicates that the increase in income to the trust from leasing the parcel, or from retaining the parcel for appreciation purposes, can reasonably be expected to exceed the return to the trust beneficiaries from the sale of the parcel, the director shall deny the sale application.

R850-80-550. Methods of Sale.

Upon authorization to sell trust land and related assets by the director, the agency shall dispose of the land or assets using methods described below:

1. A public sale pursuant to R850-80-600, or

2. A negotiated sale to a party, either directly or using a broker or real estate marketing entity, after prior approval by the board.

R850-80-600. Public Sale Procedures.

1. If a sale is authorized pursuant to R850-30-500(2)(h) or R850-80-400(4), the applicant shall be required to submit an amount equal to 10% of the offer to purchase. This amount shall constitute the applicant's bid for the purchase of the parcel and shall be provided protected records status pursuant to Section 63-2-304(1) or 63-2-304(7) until sealed bids are opened at a subsequent auction. The applicant will be allowed to enter into oral bidding subject to R850-80-600(5).

2. All sales shall be advertised through publication at least once each week for three consecutive weeks in one or more newspapers of general circulation in the county in which the land is located. Notices shall also be posted in the local governmental administrative building or courthouse and other appropriate locations. This advertisement shall indicate when and where the sale will be held. It shall contain a general description of the parcel to be sold including township, range and section and a brief description of where the parcel is located. The advertisement shall also indicate the agency office where parties interested in purchasing the land can obtain more information.

3. At least 30 days prior to the sale, notice shall be sent by certified mail to each person who owns property adjoining the land proposed for sale.

4. In addition to the requirements of R850-80-600(2), the agency may advertise sales using commonly accepted methods to the extent which the director has determined may reasonably increase the potential for additional bidding at the sale. Applicant's deposit for advertising specified by R850-80-300(1) will not be used for additional advertising.

5. Public sales shall commence with:

(a) the submission of fixed price sealed bids. A sealed bid shall contain an amount equal to at least 10% of the total amount offered to purchase the property. The agency may require these funds to be in the form of a certified check. On cash sales the purchaser shall pay the purchase price in full with guaranteed funds. The agency reserves the right to reject any bid however submitted. No less than three of those submitting the highest bids shall be allowed to enter into oral bidding, beginning at the amount of the highest sealed bid. The number of additional parties allowed to participate in oral bidding shall be those parties who submit a sealed bid that is within 20% of the third highest sealed bid. In the event that a parcel is offered both as one piece, and broken into several sub-parcels, the prevailing bidders for each of the sub-parcels shall be allowed to participate in the oral bidding when the parcel is offered as one piece. Current Grazing Permittees, Material Permittees and Special Use Lessees who submit sealed bids shall automatically qualify to enter into oral bidding, even if their sealed bid does not otherwise meet the qualifications described above. A bidder shall be held to the value of the bidder's sealed bid; or

(b) the payment of an agency-established bidding deposit. When the sales method outlined in this subsection is used, the agency may waive the requirement to not disclose the minimum acceptable sales price imposed by R850-80-500(2)(a).

6. If no bid submitted pursuant to R850-80-600(5)(a) equals or exceeds the minimum selling price, then the sale shall not be made except as provided below.

(a) The bidders who participated in the oral bidding may, at the discretion of the officer conducting the sale, be allowed to enter into additional oral bidding, with the starting amount being the previous high bid. In the event that more than one sealed bid was submitted, but there was no oral bidding, those persons having submitted a sealed bid who would have been allowed to enter into oral bidding pursuant to R850-80-600(5) shall be allowed to enter into oral bidding with the starting amount being the highest sealed bid. To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum acceptable selling price;

(b) if there is still not a successful bidder, the person submitting the highest bid, whether it be sealed or oral, may request the agency to reevaluate the minimum selling price. If the agency chooses to accept the request of the person submitting the highest bid, it shall contract for an independent appraisal, the cost for which shall be borne by the requesting party. If this appraisal indicates a value less than the highest bid, then the agency may elect to notify the highest bidder by certified mail and give him two weeks from the date of notice in which to purchase the property pursuant to R850-80-600(7).

7. At the consummation of the sale, the agency shall collect at least 10% of the total sale price, interest on the unpaid balance from the date of sale to the first day of the following month, the advertising and appraisal costs, and a sales closing charge. The balance shall be payable in no more than 20 annual payments. The first payment shall be payable one year from the first day of the month following the sale; subsequent payments shall be payable on the first day of the same month each year thereafter until the balance is paid in full. Payments in excess of the current obligations shall be applied to principal. Any unpaid balance, plus interest to date, may be paid in full at any time without penalty.

8. The interest rate which shall be charged against any unpaid balance at the time of sale shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the date that the sale is approved. Interest shall be calculated on a 365-day basis. Every year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the Monday prior to the first of the month previous to the due date of the annual installment.

9. Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days to remove

the improvements.

R850-80-700. Certificates of Sale.

1. As soon as reasonably possible following the sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the land purchased, and shall include information regarding the amount paid, the amount due, the time when the principal and interest shall become due, the beneficiary of the land, and any other terms, covenants, deed restrictions, or conditions which the agency finds appropriate. Upon payment in full, the agency shall issue a patent pursuant to Section 53C-4-102(7).

2. Certificates of sale shall be executed by the purchaser and returned to the agency within 30 days from the date of the purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice will be sent to the purchaser giving notice that after 30 days the sale will be canceled with all monies received, including the down-payment, forfeited to the Trust Lands Administration. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate and the agreement of sale shall not be final and no rights shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to reject bids for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the agency, and that no assignment is effective until approval is given by the director in writing.

5. An assignment must be consistent with these rules, executed by the assignee and assignor and acknowledged, and clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from responsibility under the original contract.

7. Partial releases of property sold under certificates may be allowed at the discretion of the agency. The following conditions must be met:

(a) A partial release may only be made for parcels ten acres or larger;

(b) Access to the remainder of the land must be preserved without restriction;

(c) All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate must have the capacity and capability to service all lands covered by the certificate;

(d) Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the price per acre paid by the purchaser under the certificate of sale, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of guaranteed funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

(e) Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph (d) above shall not include the 10% down payment required by statute or any other payment not designated by the payor, and accepted by the agency for that purpose;

(f) The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released; and

(g) The value of the remaining land shall not be reduced below the remaining principal balance of the certificate.

8. Certificates issued pursuant to this section shall contain provisions for remedies that the agency may elect in the event of default. Those remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the contract of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity. Purchasers who have defaulted on certificates of sale may be required to make larger down-payments on subsequent sales.

R850-80-800. Agency-Initiated Sales.

1. The agency may also offer lands for sale when they have been:

(a) Subdivided by the agency pursuant to Section 53C-4-102(4); or

(b) Otherwise subdivided pursuant to state law; and the subdivision is accepted by the director.

2. Sales of parcels pursuant to this section shall be made according to the following procedures:

(a) The agency may offer the subject parcels for sale after advertising pursuant to R850-80-600(2).

(b) The minimum acceptable sales price shall be no less than the appraised fair market value of the parcel and shall be disclosed.

(c) Sales shall be by public oral auction, with the minimum acceptable sales price as the starting bid. Buyers may be represented by third parties.

(d) Bidders must qualify by placing a deposit with the agency for each parcel on which they bid. The amount of the deposit shall be established by the agency for each public auction. Deposits shall be returned to unsuccessful bidders.

(e) Sealed bids shall be accepted from those unable to attend the auction and, if they equal or exceed the minimum acceptable sales price, shall be the starting bids in the oral auction. Sealed bids must clearly designate the lot on which the bid is made, and must include the qualifying deposit.

(f) Payment by the successful bidder shall be made pursuant to the applicable provisions of R850-80-600(7).

(g) In addition to the sales price, each purchaser of a parcel shall pay:

i) a prorated portion of the appraisal costs; and

ii) an application and sales processing charge.

(h) Other provisions of the sale shall be administered pursuant to R850-80-600(8), R850-80-600(10) and R850-80-700.

3. Over the Counter Sales

(a) Following a public auction, the director may designate any unsold parcel for over the counter sale. The designation

shall continue in force for a period determined by the director, but not to exceed two years.

(b) The minimum acceptable price of an unsold parcel on an over the counter sale shall be set by the director, using one of the following:

i) The average price of at least three parcels closest in size and characteristics which were sold at the related public auction under R850-80-800(2); or

ii) A reappraisal.

4. At the discretion of the director, unsold parcels may be retained for offering at a subsequent public auction.

5. At the discretion of the director, unsold parcels may be listed with a realtor at the minimum acceptable price plus an amount equivalent to the commission which the realtor will charge on the sale.

KEY: administrative procedure, sales*
July 16, 1998 **53C-1-302(1)(a)(ii)**
Notice of Continuation June 30, 1997 **53C-2-201(1)(a)**
53C-4-101(1)
53C-4-102
53C-4-202(6)

R865. Tax Commission, Auditing.
R865-13G. Motor Fuel Tax.
R865-13G-1. Carrier's Reports of Motor Fuel Deliveries Pursuant to Utah Code Ann. Section 59-13-208.

A. Carrier means every individual, firm, partnership, group, or corporation importing or transporting motor fuels into the state of Utah by means of conveyance, whether gratuitously, for hire, or otherwise. It includes both common and private carriers, as those terms are commonly used.

B. Every carrier delivering motor fuels, as defined in Utah Code Ann. Section 59-13-102, within this state must submit written reports of all deliveries from outside Utah. The Tax Commission will furnish forms and the forms must be submitted on or before the last day of each month to cover fuel imported during the previous month.

R865-13G-3. Export Sales Pursuant to Utah Code Ann. Section 59-13-201.

A. Sales and deliveries of motor fuel, by a Utah licensed distributor are exempt, provided one of the following requirements is met:

1. delivery is made to a point outside this state by a common or contract carrier to a Utah licensed distributor;

2. delivery is made to a point outside this state in a vehicle owned and operated by a Utah licensed distributor;

3. delivery is made at a point in or outside this state to a distributor or importer licensed in another state for use or sale in that state; or

4. delivery is made, in a drum or similar container, at a point in the state of Utah to a person for use in another state.

B. Each export sale must be supported by records that disclose the following information.

1. If sold to a licensed distributor, records shall show the date exported, the consignee or purchaser, and the destination of the motor fuel.

2. If the exporter is not a licensed distributor, credit must be claimed through a licensed distributor and the following requirements must be met:

(a) the exporter must furnish a licensed distributor with a completed Form TC-112 Proof of Exportation -- Motor Fuel, showing the date, the purchaser or consignee, and the destination of the motor fuel;

(b) the licensed distributor shall make note of the date this information is furnished and make claim for credit due on the motor fuel return for the same period in which the Form TC-112 was received;

(c) claims for credit or refund must be made within 180 days from date of export, whether the claim is made through a licensed distributor or directly to the Tax Commission; all persons authorized to do so must file a claim directly with the Tax Commission; and

C. motor fuel delivered into the fuel tank or auxiliary fuel tank of any vehicle owned or operated by a resident or a nonresident of this state is taxable.

R865-13G-5. Sales to Licensed Distributors Pursuant to Utah Code Ann. Sections 59-13-203 and 59-13-204.

A. Motor fuel dealers engaged in the business of selling motor fuel for resale in wholesale quantities may elect to become a licensed distributor under the provisions of Utah Code Ann. Sections 59-13-203 and 59-13-204 of the Motor Fuel Tax Act. License and bond requirements contained in Utah Code Ann. Section 59-13-203 of the Motor Fuel Tax Act must be fulfilled when a dealer makes this election.

B. A licensed distributor wishing to purchase motor fuel without payment of tax at the time of purchase must furnish his supplier or suppliers with a signed letter containing the following information:

1. a statement advising that the purchaser is the holder of a valid motor fuel tax license;

2. the number of the license; and

3. a statement that the purchaser will assume the responsibility and liability for the payment of motor fuel tax on all future purchases of motor fuel.

C. The letter from the purchaser must be retained by the seller as part of his permanent records.

R865-13G-6. Product Considered Exempt Pursuant to Utah Code Ann. Section 59-13-210.

A. Volatile or inflammable liquids which qualify as motor fuels under Utah laws but which in their present state are not usable in internal combustion engines and in fact are not used as motor fuels in internal combustion engines are exempt if sold in bulk quantities of not less than 1,000 gallons at each delivery.

B. The licensed motor fuel importer, refiner, or licensed distributor shall submit specifications and other related data to the Tax Commission. If the Tax Commission agrees that the product is not a taxable motor fuel in its current state, it may be sold exempt provided it is determined that all of the product sold will be used for other than use in an internal combustion engine.

C. The Tax Commission may set reporting and verification requirements for nontaxable products if additional sales are made to the same purchaser for identical use. Failure to submit reports, verification, or specifications upon request by the Tax Commission will result in the product losing its exempt status.

D. Sellers and purchasers of the exempt product must maintain records to show the use of the product together with laboratory specifications to indicate its quality. These records must be available for audit by the Tax Commission.

E. Any exempt products subsequently sold in their original state for use as a motor fuel, or to be blended with other products to be used as a motor fuel, will be subject to the motor fuel tax at the time of sale.

R865-13G-8. Nonhighway Agricultural Use Pursuant to Utah Code Ann. Section 59-13-202.

A. Every person who purchases motor fuel within this state for the operation of farm engines, including self-propelled farm machinery, used solely for nonhighway agricultural purposes, is entitled to a refund of the Utah Motor Fuel Tax paid thereon.

1. Agricultural purposes relate to the cultivation of the soil for the production of crops, including: vegetables, sod crops, grains, feed crops, trees, fruits, nursery floral and ornamental stock, and other such products of the soil. The term also includes raising livestock and animals useful to man.

2. Refunds are limited to the person raising agricultural

products for resale or performing custom agricultural work using nonhighway farm equipment. It is further limited to persons engaged in commercial farming activities rather than those engaged in a hobby or farming for personal use.

3. Fuel used in the spraying of crops by airplanes does not ordinarily qualify for refund since aviation fuel tax rather than motor fuel tax normally applies to the sale of this fuel.

R865-13G-9. Solid Hydrocarbon Motor Fuel Exemptions Pursuant to Utah Code Ann. Section 59-13-201.

A. Motor fuels refined in Utah from solid hydrocarbons located in Utah are exempt from the motor fuel tax. If any exempt product is blended into gasoline refined from oil or into gasohol produced by blending gasoline and alcohol, the resulting product will be exempt only to the extent of the exempt hydrocarbon fuel included in the final blended product.

1. For example, if the motor fuel produced from solid hydrocarbons is blended with product containing 90 percent motor fuel produced from oil, 10 percent of the total product will be exempt from the motor fuel tax. To the extent possible, the solid hydrocarbon exemption should be claimed by the person refining or distilling the exempt product.

B. If the resulting blended motor fuel is exported from Utah or sold to a tax-exempt government agency, the exemption claimed as a result of the export or government sales must be reduced by the amount of exemption claimed for the motor fuel produced from solid hydrocarbons in Utah.

C. In order for this adjustment to be made in cases where the export or exempt sale is made by someone other than the refiner or blender, the invoice covering the sale of the fuel must designate the amount of exempt product included in the motor fuel sold. This must be shown whether sold to a licensed distributor or to an unlicensed distributor.

1. If the exempt, or partially exempt product is sold to a licensed distributor, the distributor must make the adjustment on the form used to claim credit for the government sale or the export.

2. If sold to an unlicensed distributor, the export form or government sale form submitted to a licensed distributor for a claim must contain a statement disclosing the amount of exempt motor fuel included.

3. If the records are insufficient to disclose the identity of the exempt purchaser on a direct basis, an adjustment shall be made multiplying the exempt product by a percentage factor representing the government and export sales portion of total motor fuel sales for the same period.

R865-13G-10. Exemption For Collective Purchase of Motor Fuels by State and Local Government Agencies Pursuant to Utah Code Ann. Section 59-13-201.

A. Definitions:

1. "Sale" means the passing of title from the seller to the buyer for a price (see Utah Code Ann. Section 70A-2-106(1)).

2. "Delivery" means the physical transfer of the goods from seller to buyer, directly or through a carrier. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery (see Utah Code Ann. Section 70A-2-503(1)).

B. In order for collective purchases to qualify for the 750 gallon exemption, transactions must comply with the conditions of at least one of the four cases below.

1. Multiple government agencies exclusively sharing a tank, which is leased or owned by one or more of those agencies, may be classified as exempt if one of the following conditions are met:

a. If title to the fuel passes as it enters the tank, then any deliveries into the tank of 750 gallons or more billed to a single government agency will qualify for exemption.

b. If title to the fuel passes as it leaves the tank, then the provisions of B.2. must be met for the exemption to apply.

2. Purchases by a government agency from an automated metering system activated by a card or key qualify for exemption if the purchases are billed in quantities of 750 gallons or more and the time period over which the purchases were made is stated on the invoice. The government agency must have control of, rights to, and be the only agency billed for all fuel metered on each card or key assigned to it in order for the arrangement to be tax exempt.

3. Deliveries to more than one bulk storage facility owned or leased by a government agency qualify for exemption if the total amount of fuel delivered within 48 hours is 750 gallons or more. The location, amount, and date of each delivery must be shown on the invoice. As an example, 500 gallons may be delivered to a school district's shop, and another 500 gallons to its bulk storage facility out of town. The total 1000 gallons is exempt from taxation if the deliveries are made within 48 hours of each other and are billed as a single sale.

4. Bulk deliveries made from a truck with a delivery capacity of less than 750 gallons can qualify for the exemption if the total fuel delivered by the truck to the governmental agency within 48 hours is 750 or more gallons, regardless of the number of trips taken to deliver the fuel. The invoice must indicate the number and date of deliveries.

C. Sales to an Indian tribe for its exclusive use, acting in its tribal capacity, are exempt from taxation if the requirements of this rule are met. Sales to individual tribal members, to Indian businesses operating on or off tribal territory, or to other nontribal organizations for personal use, retail sales purposes, or distribution to third parties do not qualify for the exemption for sales to Indian tribes.

D. Licensed distributors claim the exemption on qualifying sales to government agencies by taking the deduction on their motor fuel tax return for the month in which the sales occurred. In the case of qualifying collective purchases which span more than one month, the deduction is claimed in the month in which the sale is invoiced. Nonlicensed distributors making qualifying sales to government agencies must obtain credit for the exemption through the return of the licensed distributor supplying them with the fuel for the sales. Each sale claimed as a deduction must be supported with a copy of the sales invoice attached to the return. The sales invoice must be in proper form and must contain sufficient information to substantiate the exemption status of the sale according to this rule.

R865-13G-11. Consistent Basis for Motor Fuel Reporting Pursuant to Utah Code Ann. Section 59-13-204.

A. Definitions:

1. "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.

2. "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

B. All Utah licensed distributors shall elect to calculate the tax liability on the Utah Motor Fuel Tax Returns on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any licensed distributor failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Requests for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

C. If the election is made to purchase under the net gallon basis, all invoices, bills of lading, and motor fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-IP Petroleum Measurement Tables.

D. All transactions such as purchases, sales, or deductions, reported on the Motor Fuel Tax Return must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

E. This rule shall take effect January 1, 1992.

R865-13G-13. Refund of Motor Fuel Taxes Paid Pursuant to Utah Code Ann. Section 59-13-201.

A. Governmental entities entitled to a refund for motor fuel taxes paid shall submit a completed Application for Government Motor Fuel and Special Fuel Tax Refund, form TC-114, to the commission.

B. A government entity shall retain the following records for each purchase of motor fuel for which a refund of taxes paid is claimed:

1. name of the government entity making the purchase;

2. license plate number of vehicle for which the motor fuel is purchased;

3. invoice date;

4. invoice number;

5. supplier;

6. Vendor location;

7. fuel type purchased;

8. number of gallons purchased; and

9. amount of state motor fuel tax paid.

C. Original records supporting the refund claim must be maintained by the governmental entity for three years following the year of refund.

R865-13G-14. Environmental Assurance Fee Pursuant to Utah Code Ann. Section 19-6-410.5.

A. Petroleum products exported from a refinery directly out of state are exempt from the environmental assurance fee.

B. Retailers or consumers who are owners or operators of tanks, including owners or operators of above-ground storage tanks, who do not participate in the Environmental Assurance Program, may receive an exemption from the environmental assurance fee if:

1. none of the owner's or operator's tanks are covered under the Environmental Assurance Program; and

2. the owner or operator purchases the petroleum product for the tank directly from the refinery, or purchases a direct import of a petroleum product for which the environmental assurance fee has not previously been imposed.

C. Retailers or consumers who are owners or operators of tanks who do not participate in the Environmental Assurance Program, but who fail to meet the conditions provided under this rule to purchase petroleum products exempt from the environmental assurance fee may apply to the Tax Commission for a refund of those fees paid, no more often than on a monthly basis, on form TC-113ES.

D. For purposes of the exemption and refund provisions of this rule, owners or operators of above-ground storage tanks include owners of fuel stored in tanks owned by a third party where the owner of the fuel pays a fee for use of the tank.

E. On a monthly basis, the Department of Environmental Qualify shall provide the Customer Service Division of the Tax Commission with a list of current participants in the Environmental Assurance Program.

KEY: taxation, motor fuel, gasoline, environment

August 11, 1998	**19-6-410**
Notice of Continuation April 21, 1997	**59-13-201**
	59-13-202
	59-13-203
	59-13-204
	59-13-208
	59-13-210

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Title 59, Chapter 12.

A. The sales tax is imposed upon sales of tangible personal property made within the state of Utah, regardless of where such property is intended to be used, and on the amount paid or charged for all services for repairs and renovations of tangible personal property or for installation of tangible personal property rendered in connection with other tangible personal property.

B. The use tax is imposed upon the use, storage or other consumption of tangible personal property, and upon the amount paid or charged for the services for repairs or renovations of tangible personal property or installation of tangible personal property in connection with other tangible personal property, if the tangible personal property is for use, storage, or consumption in Utah; and, ordinarily, if the transaction does not take place within the state of Utah.

C. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

D. The distinguishing factor in determining which tax is applicable is normally the place where the sale or service takes place. If the sale is made in Utah, the sales tax applies. If the sale is made elsewhere, the use tax applies.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. Vendors shall not in any way waive the collection or imposition of the tax. Invoices and receipts shall show the tax collected as a separate item. Vendors are required to remit to the Tax Commission all tax funds in possession and are guarantors of all amounts required to be collected.

B. If vendors collect an excess amount of tax, they must either refund such excess to their customers or remit it to the Tax Commission. However, vendors may first offset under collections of tax on sales against any excess tax collected in the same quarterly reporting period. Vendors may not offset underpayment of tax on purchases, whether the purchases are from in state or out of state sources.

R865-19S-6. Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The vendor shall collect sales or use tax at the rate set by law. Rule R865-19S-30 defines sales price.

B. The Tax Commission furnishes tables that may be used to determine the proper amount of tax on each transaction. These tables reflect the appropriate amount, including applicable local taxes, for the various taxing jurisdictions.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A. A separate license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. Any person required to collect sales tax must notify the Tax Commission of any change of address or character of business, or if the business is discontinued.

R865-19S-8. Bonds and Securities Pursuant to Utah Code Ann. Section 59-12-107.

A. Any business not in compliance with the sales tax collection and remittance procedures outlined in the Sales and Use Tax Act must post security with the Tax Commission sufficient in amount to insure the payment of whatever liability may be involved. Noncompliance with the Sales and Use Tax Act includes:

1. failure to file returns,
2. failure to make payments,
3. filing of returns that are improper,
4. payment of sales tax with a check that is not honored.

B. The Tax Commission may accept a valid corporate surety bond, United States treasury bond, cash, or such other negotiable security as it deems adequate.

C. The bond will be released only upon written request and after a careful review of all circumstances or upon cessation of business if no liability exists.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Section 59-12-107.

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due. Where a vendor operates two or more places of business, he shall file one return, accompanied by Form TC-71A, Schedule A--Allocation of Local Sales and Use Taxes, covering the operations of all places of business operated under the same account number. Each return must be signed by the taxpayer or an authorized agent.

B. Returns, accompanied by the tax due, must be filed with the Tax Commission. If the due date falls on a Saturday, Sunday, or legal holiday, returns will be considered timely filed if received on the next business day. If returns are transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

C. Extensions of time for filing of returns and paying the tax are granted only for cause and upon written application received prior to the time the return is due. No such extension shall be made for more than 90 days.

D. Sales and use tax returns shall be filed and paid quarterly beginning with the first calendar quarter of business, or portion thereof, with the following exceptions:

1. New businesses that expect annual sales and use tax

liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2. Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3. Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status. The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

4. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

5. Based upon delinquent sales tax amounts or upon review by the Commission, businesses may be required to make daily, weekly, or monthly deposits of sales tax amounts if deemed necessary to ensure timely remittance of the sales tax.

E. The Tax Commission may require licensed vehicle dealers who are late or delinquent in reporting or remitting sales tax to pay sales tax on future vehicle sales at the time of application for title or registration of the vehicle. Delinquent dealers shall continue to pay at the time of registration until the Tax Commission determines that all accounts are current and steps have been taken to ensure future compliance. The dealer must retain Tax Commission receipts for payment of taxes, and may adjust the quarterly tax returns to compensate for payments made at the time of application for title or registration. If the Tax Commission deems it necessary, it may require delinquent dealers to make payments with a cashier's check, a money order, or a similar guaranteed form of payment.

R865-19S-13. Confidential Nature of Returns Pursuant to Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Justified adjustments may be made and credit allowed for cash discounts, returned goods, bad debts, and repossessions that result from sales upon which the tax has been reported and paid in full by retailers to the Tax Commission.

1. Adjustments and credits will be allowed only if the retailer has not reimbursed himself in the full amount of the tax except as noted in C.6.a. and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off, or the repossession occurs.

3. Any refund or credit given to the purchaser must include the related sales tax.

4. Sales tax credits for bad debts are allowable only on accounts determined to be worthless and actually charged off for income tax purposes. Recoveries made on bad debts and repossessions for which credit has been claimed must be reported and the tax paid.

5. Sales tax credit for repossessions is allowable on the basis of the original amount subject to tax, less down payment. This amount is multiplied by the ratio of the number of monthly payments not made, divided by the total number of monthly payments required by the contract.

a) For example: the credit allowed on a taxable $30,000 car sale with a $5,000 down payment financed on a 60-month contract and repossessed after 20 full payments were made would be $16,667 as computed and shown below. The number of unpaid full payments is determined by dividing the total received on the contract by the monthly payment amount.

TABLE

Example:		
(1)	Original amount subject to tax	$30,000
(2)	Down payment or trade in	(5,000)
(3)	Balance of taxable base financed	25,000
(4)	Number of full payments unpaid at the time of repossession	40
(5)	Total contract period (no. of months)	60

Line 4 divided by line 5 times taxable base financed equals repossession credit

(40/60) x $25,000 = $16,667

b) In cases where a contract assignment creates a partial (part of the loan amount) recourse obligation to the seller, any repossession credit must be calculated in the same manner as shown above.

c) The credit for repossession shall be reported on the dealer's or vendor's sales tax return with an attached schedule showing computations and appropriate adjustments for any tax rate changes between the date of sale and the date of repossession.

6. Credit for tax on repossessions is allowed only to the

selling dealer or vendor.

a) This does not preclude arrangements between the dealer or vendor and third party financial institutions wherein sales tax credits for repossessions by financial institutions may be taken by the dealer or vendor who will in turn reimburse the financial institution.

b) In the event the applicable vehicle dealer is no longer in business, and there are no outstanding delinquent taxes, the third party financial institution may apply directly to the Tax Commission for a refund of the tax in the amount that would have been credited to the dealer.

D. Adjustments in sales price, such as allowable discounts or rebates, cannot be anticipated. The tax must be based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the credit is claimed, the tax credit must be determined and deducted rather than deducting the sales price adjustments.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the

Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales. Records shall include:

1. sales invoices showing the name and identity of the customer; and

2. exemption certificates for exempt sales of tangible personal property or services if the exemption category is shown on the exemption certificate forms.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A vendor may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. The burden of proving that a sale is for resale or otherwise exempt is upon the vendor. If any agent of the Tax Commission requests the vendor to produce a valid exemption certificate or other similar acceptable evidence to support the vendor's claim that a sale is for resale or otherwise exempt, and the vendor is unable to comply, the sale will be considered taxable and the tax shall be payable by the vendor.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102(8)(a) and 59-12-103(1)(g).

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32, accommodations as defined in Rule R865-19S-79, services performed on tangible personal property as defined in Rules R865-19S-51 and R865-19S-78, services that are part of a sale or repair, admissions as defined in Rules R865-19S-33 and R865-19S-34, sales of meals as defined in Rules R865-19S-61 and R865-19S-62, and sales of certain public utility services.

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.

R865-19S-28. Retailer Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Retailer" means vendors operating within this state directly, or indirectly through agents or representatives, if the vendor:

1. has or utilizes an office, distribution house, sales house, warehouse, service enterprise, or other place of business,

2. maintains a stock of goods in Utah,

3. regularly solicits orders whether or not such orders are accepted in this state, unless the activity in this state consists solely of advertising or solicitation by direct mail,

4. regularly engages in the delivery of property in this state other than by common carrier or United States mail, or

5. regularly engages in any activity in connection with the leasing or servicing of property located within this state.

B. A person may be a retailer within the meaning of the act even though the sale of tangible personal property is incidental to his general business. For example, a contractor may operate a salvage business and be a retailer within the meaning of the act.

R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Wholesale sale" means any sale by a wholesaler, retailer, or any other person, of tangible personal property or services to a retailer, jobber, dealer, or another wholesaler for resale.

1. All sales of tangible personal property or services which enter into and become an integral or component part of tangible personal property or product which is further manufactured or compounded for sale, or the container or the shipping case thereof, are wholesale sales.

2. All sales of poultry, dairy, or other livestock feed and the components thereof and all seeds and seedlings are deemed to be wholesale sales where the eggs, milk, meat, or other

livestock products, plants, or plant products are produced for resale.

3. Sprays and insecticides used in the control of insect pests, diseases, and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be wholesale sales. Also baling ties and twine for baling hay and straw and fuel sold to farmers and agriculture producers for use in heating orchards and providing power in off-highway type farm machinery shall be wholesale sales.

B. Tangible personal property or services which are purchased by a manufacturer or compounder which do not become and remain an integral part of the article being manufactured or compounded are subject to sales or use tax.

1. For example, sales to a knitting factory of machinery, lubricating oil, pattern paper, office supplies and equipment, laundry service, and repair labor are for consumption and are taxable. These services and tangible personal property do not become component parts of the manufactured products. On the other hand, sales of wool, thread, buttons, linings, and yarns, to such a manufacturer that do become component parts of the products manufactured are not taxable.

C. The price of tangible personal property or services sold or the quantity sold are not factors which determine whether or not the sale is a wholesale sale.

D. All vendors who make wholesale sales are required to obtain an exemption certificate from the purchaser as evidence of the nature of the sale, as required by Rule R865-19S-23.

R865-19S-30. Purchase Price or Sales Price Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-104.

A. Fair market value for purposes of Sections 59-12-104(14) and 59-12-104(19) shall be determined in accordance with the provisions of Tax Commission Rule R884-24P-46.

B. "Purchase price" and "sales price" may be used interchangeably.

C. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

D. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;

2. the purchase price of the vehicle;

3. the value allowed for the trade-in vehicle;

4. the net difference between the vehicle traded and the vehicle purchased;

5. the signature of the seller; and

6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

A. The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental.

B. When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement. The tax applies when situs of the property is in Utah or if the lessee takes possession in Utah. However, if the leased property is used exclusively outside Utah and an affidavit is furnished to the lessor to this effect, the tax does not apply. Examples of taxable leases include neon signs and custom made signs on the premises of the lessee, automobiles, and construction equipment leased for use in Utah.

C. Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

D. Persons who furnish an operator with the rental equipment and charge for the use of the equipment and personnel are regarded as the consumers of the property leased or rented. An example of this type of rental is the furnishing of a crane and its operating personnel to a building erector. Sales or use tax then applies to the purchase of the equipment by the lessor rather than to the rental revenue.

E. Rentals to be applied on a future sale or purchase are subject to sales or use tax.

F. A lessee may, at its option, treat a conditional sale lease as either a sale or lease for sales or use tax purposes.

A conditional sale lease is a lease in which:

1. the consideration the lessee is to pay the lessor for the right to possession and use of the property is an obligation for the term of the lease not subject to termination by the lessee, and

2. the total consideration to be paid by the lessee is fixed at the time the lease is executed and cannot be modified by use, condition, or market value, and either:

a. the lessee is bound to become the owner of the property; or

b. the lessee has an option to become the owner of the property for no additional consideration or nominal additional consideration upon compliance with the lease agreement. Nominal consideration in this sense means ten percent or less of the original lease amount.

G. If the lessee treats a conditional sale lease as a sale, and if the lessor is also the vendor of the property, the sales price for sales tax purposes must be at least equal to the average sales price of similar property.

H. If the lessee treats a conditional sale lease as a sale, the sales tax must be collected by the lessor on the full purchase price of the property at the time of the purchase.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

1. This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

B. "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

C. "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

D. If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

E. Annual membership dues may be paid in installments during the year.

F. Amounts paid for the following activities are not admissions or user fees:

1. lessons, public or private;

2. sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

3. sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

G. If amounts charged for activities listed in F. are billed along with admissions or user fees, the amounts not subject to the sales tax must be listed separately on the invoice in order to remain untaxed.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

A. The phrase "place of amusement, entertainment, or recreation" is broad in meaning but conveys the basic idea of a definite location.

B. The amount paid for admission to such a place is subject to the tax, even though such charge includes the right of the purchaser to participate in some activity within the place. For example, the sale of a ticket for a ride upon a mechanical or self-operated device is an admission to a place of amusement.

C. Charges for admissions to swimming pools, skating rinks, and other places of amusement are subject to tax. Charges for towel rentals, swimming suit rentals, skate rentals, etc., are also subject to tax. Locker rental fees are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102(7), and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated and Occasional Sales Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made by officers of a court, pursuant to court orders, are occasional sales, with the exception of sales made by trustees, receivers, assignees and the like, in connection with the liquidation or conduct of a regularly established place of business. Examples of casual sales are those made by sheriffs in foreclosing proceedings and sales of confiscated property.

B. If a sale is an integral part of a business whose primary function is not the sale of tangible personal property, then such

sale is not isolated or occasional. For example, the sale of repossessed radios, refrigerators, etc., by a finance company is not isolated or occasional.

C. Sales of vehicles required to be titled or registered under the laws of this state are not isolated or occasional sales, except that any transfer of a vehicle in a business reorganization where the ownership of the transferee organization is substantially the same as the ownership of the transferor organization shall be considered an isolated or occasional sale.

D. Isolated or occasional sales made by persons not regularly engaged in business are not subject to the tax. The word "business" refers to an enterprise engaged in selling tangible personal property or taxable services notwithstanding the fact that the sales may be few or infrequent. Any sale of an entire business to a single buyer is an isolated or occasional sale and no tax applies to the sale of any assets made part of such a sale (with the exception of vehicles subject to registration).

E. The sale of used fixtures, machinery, and equipment items is not an exempt occasional sale if the sale is one of a series of sales sufficient in number, amount, and character to indicate the seller deals in the sale of such items.

F. Sales of items at public auctions do not qualify as exempt isolated or occasional sales.

G. Wholesalers, manufacturers, and processors who primarily sell at other than retail are not making isolated or occasional sales when they sell such tangible personal property for use or consumption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary

line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-45. Auctioneers, Consignees, Bailees, Etc. Pursuant to Utah Code Ann. Section 59-12-102.

A. Every auctioneer, consignee, bailee, factor, etc., entrusted with possession of any bill of lading, custom house permits, warehousemen's receipts, or other documents of title for delivery of any tangible personal property, or entrusted with possession of any of such personal property for the purpose of sale, is deemed to be the retailer thereof, and is required to collect sales tax, file a return, and remit the tax. The same rule applies to lien holders such as storage men, pawnbrokers, mechanics, and artisans.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agriculture Producers Pursuant to Utah Code Ann. Section 59-12-104.

A. Feed, medicine, and veterinary supplies may be purchased tax exempt as sales of tangible personal property used or consumed primarily and directly in farming operations if used to produce, feed, or care for agricultural products that are for sale, or to feed or care for working dogs and working horses in agricultural use, but is taxable if used for pets or other animals not to be marketed.

B. Fur-bearing animals that are kept for breeding, for their products, or for other useful purposes, shall be deemed agricultural products. Persons engaged in raising fur-bearing animals, such as foxes or mink, are agricultural producers.

C. Electricity, gas, coal, and other fuels are taxable when sold for general farm use; but fuel sold to agricultural producers for use in heating orchards or operating off-highway type farm equipment is exempt.

D. The exemption for sales of tangible personal property used or consumed primarily and directly in farming operations applies only to commercial farming operations, as evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or similar evidence that the farm is operated as a commercial venture.

E. A vendor making sales to farmers or other agricultural producers is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

F. Poultry, eggs, and dairy products are not seasonal products for purposes of Section 59-12-104(22).

G. A vendor is subject to the reporting requirements of Section 59-12-105.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication and Installation Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication or installation which is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Charges for labor to install personal property in connection with other personal property are taxable (see Rule

R865-19S-78) whether material is furnished by seller or not.

D. Labor to install tangible personal property to real property is exempt, whether the personal property becomes part of the realty or not. See Rule R865-19S-58, dealing with improvements to or construction of real property, to determine the applicable tax on personal property which becomes a part of real property.

E. Tangible personal property which is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, and installation charges are exempt if separately stated. If the retailer does not segregate the selling price and installation charges, the sales tax applies to the entire sales price, including installation charges.

F. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-52. Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102.

A. Federal excise tax involved in a transaction which is subject to sales or use tax is exempt from sales and use tax provided the federal tax is separately stated on the invoice or sales ticket and collected from the purchaser.

B. State and local taxes are taxable as a part of the sales price of an article if the tax is levied on the manufacturer or the seller.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

R865-19S-55. Hospitals Pursuant to Utah Code Ann. Section 59-12-104.

A. All retail sales (other than prescribed medicines as noted in Rule R865-19S-37) made to hospitals are taxable unless the Tax Commission has furnished the hospital an opinion that it qualifies as a religious or charitable institution, and such hospital furnishes its vendors a purchase order or a check in accordance with instructions set forth in Rule R865-19S-23.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

1. "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

2. Fixtures or other items of tangible personal property

such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

B. The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

1. The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

2. Except as otherwise provided in B.4, the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

3. Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

4. Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

a) the religious or charitable institution makes payment for the materials directly to the vendor; or

b) the materials are purchased on behalf of the religious or charitable institution.

(i) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

5. Purchases not made pursuant to B.4. are assumed to have been made by the contractor and are subject to sales tax.

C. Sales of materials and supplies to contractors for use in out-of-state jobs are taxable unless sold in accordance with Section 59-12-104(33) of Tax Commission Rule R865-19S-44.

D. If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

1. If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

2. The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

E. This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

1. moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

2. manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery; and

3. items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales tax treatment or charges for installing trade fixtures to real property are dealt with in R865-19S-78.

E. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Section 59-12-104.

A. The tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

1. By specific exemption, the following meal sales are

exempt from taxation:

a. public elementary and secondary school meals, whether sold to students or the public; and

b. inpatient meals provided at medical or nursing facilities. Tax must be paid on the purchase price of food by nonexempt medical or nursing facilities.

2. Ingredients which become a component part of meals subject to tax are construed to be purchased for resale.

B. Where no separate charge or specific amount is paid for meals furnished but is included in the membership dues or board and room charges; the club, boarding house, fraternity, sorority, or other place is considered to be the consumer of the items used in preparing such meals.

C. Meals served by religious or charitable institutions, and institutions of higher education are exempt from taxation only if the meals are not available to the general public. The term "available to the general public" is interpreted broadly so as to include any restaurant, cafeteria, or other facility where service is not restricted and monitored for a limited class of people. The following are guidelines for various types of meal sales:

1. Exemption status of employee cafeterias is determined in large measure by the availability of access to nonemployee personnel. In order for an exemption to apply, access to either the specific eating area or the overall building in which the eating facility is located must be controlled and monitored. Merely posting signs stating that a cafeteria is for use only by employees is not sufficient.

2. Meals sold in cafeterias, restaurants, and other facilities at institutions of higher education are subject to taxation if access is made available to the general public. The requirements outlined in C.1. for employee cafeterias apply to facilities operated by institutions of higher education. Meals sold and pre-paid pursuant to a room and board contract are not subject to taxation.

3. Meals sold or furnished at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore tax exempt.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103.

A. Morticians, undertakers, and funeral directors make taxable sales of caskets, vaults, clothing, etc. They also render nontaxable services to their patrons. Their purchase of antiseptics, cosmetics, embalming fluids, and other chemicals used in rendering professional services is taxable.

B. If the books are kept in such a manner as to reflect the sales of tangible personal property separate from the services rendered, the tax attaches only to the sale of tangible personal property. If no separation is made of the tangible personal property and the services rendered, the sales tax is collected upon one-half of the total price of a standard funeral service. This includes the casket, professional services, care of remains, funeral coach, floral car, use of funeral car, use of funeral chapel, and the securing of permits.

1. Clothing, an outside grave vault, and other tangible personal property furnished in addition to the casket must be billed separately and the sales tax collected thereon.

R865-19S-65. Newspapers, Magazines and Advertising Agencies Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The sale of magazines at retail or the taking of magazine subscriptions is taxable. By express exemption sales at retail of newspapers and newspaper subscriptions are not taxable.

1. Newspaper publishers, may purchase newsprint, ink, staples, plastic, or paper protective coverings, rubber bands, or other materials distributed with the newspapers tax free.

2. To be classified as a newspaper, the publication must appear to be a newspaper in the general or common sense and must contain the following elements:

a. published at short intervals, daily, or weekly;

b. must not, when its successive issues are put together, constitute a book;

c. must be intended for circulation among the general public;

d. must contain matters of general interest and report on current events.

B. Advertising inserts distributed with a newspaper that are identified with the name and date of distribution of the newspaper are exempt from sales and use tax. The identification may include a multiple listing of all the newspapers carrying the insert and extended publication dates.

1. Advertising inserts that are not identified with the name and date of distribution of the newspaper are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with the above.

C. Advertising space sold in newspapers, magazines, or otherwise is not subject to tax. Likewise, charges made by advertising agencies for preparing and placing advertising media are charges for service and, therefore, are not taxable.

D. The tax applies, however, to sales of tangible personal property to advertisers or advertising agencies for use or consumption in preparing advertisements. Such sales include

papers, ink, paint, tools, office supplies, art work purchased from independent artists, engraver's charges for making metal plates, electrotyper's charges for making electrotypes or matrices, and printer's charges for the production of pamphlets, booklets, brochures, and other printed materials.

E. The tax does not apply with respect to art work produced within the office of the advertiser or the advertising agency for the purpose of visualization of an idea and the client's selection of the particular visualization favored for use in the advertisements. The sale of materials to the advertiser or advertising agency for producing such art work is subject to tax.

F. If magazines are distributed free of charge within the state, there is still a taxable transaction associated with the production or acquisition of the magazines. The amount of tax due shall be the greater of the tax on component parts such as paper, ink and binding materials purchased by the printer or tax on the amount the sponsor pays the printer for production of the magazine. The sponsor is the party contracting with the publisher to print the magazines. A party who only advertises in the magazine is not considered the sponsor.

G. If magazines are shipped out of state by common carrier and distributed free of charge to out-of-state recipients, there is not a taxable transaction associated with the production or acquisition of the magazines.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors of articles of tangible personal property, which are given away as premiums or otherwise, are regarded as the users or consumers thereof and the sale to them is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations who would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property which is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of such premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property which is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. Manufacturer rebates on sales of tangible personal property are considered as a discount and the taxable amount is the net amount paid by the customer after deducting the rebate. If the manufacturer's rebate is certain at the time of sale, tax should be charged only on the net amount of the sale; otherwise, tax is charged on the total before the rebate credit, and then later refunded to the customer when proof of rebate is given to the dealer for his file.

1. If the rebate is applied as part of the down payment, it must be segregated on the buyer's order, invoice, or other sales document from any cash down payment. Since the tax base for collection is reduced by the amount of the rebate, the rebate must be shown separately and identified for sales tax computation and subsequent audit verification. Care must be taken to avoid a double deduction if the gross sales price on the sales document has already been reduced by the rebate amount.

G. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

H. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions which primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services. Physicians, dentists,

beauticians, barbers, etc., are examples of persons in this category.

B. Prescription medicines are exempt from sales and use taxes.

R865-19S-71. Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. To qualify for the sales tax exemption for movements of freight by common carrier, transportation charges must satisfy all of the following conditions:

1. Shipment must take place by means of common carrier.

2. Charges must be segregated and listed separately.

3. Charges must reflect the actual cost of shipping the particular tangible personal property by common carrier.

4. Shipment of the tangible personal property must take place after passage of title.

a) Shipment of the tangible personal property takes place after passage of title if the terms of the sale or lease are F.O. B. origin or F.O.B. shipping point.

b) If the invoice does not indicate an F.O.B. point, and a common carrier is used, it is assumed the terms are F.O.B. origin.

c) In all other cases, the shipment of tangible personal property takes place before passage of title.

B. If shipment of the tangible personal property occurs before the passage of title, shipping costs, to the extent included in the sales price of the item, and regardless of whether they are segregated on the invoice, shall be included in the sales and use tax base.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, Car Washers, Etc. Pursuant to Utah Code Ann. Section 59-12-103 and 59-12-104.

A. Charges for painting, polishing, washing, cleaning, and waxing tangible personal property are subject to tax, and no deduction is allowed for the service involved.

B. Sales of paint, wax, or other material which becomes a part of the customer's tangible personal property, to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

C. Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, car washes, etc., are sales to the final consumer and are subject to tax.

R865-19S-78. Charges for Labor to Repair, Renovate, and Install Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. Charges for installation labor.

1. Amounts paid or charged for labor for installing tangible personal property in connection with other tangible personal property are subject to tax.

2. Separately stated charges for labor to install personal property to real property are not subject to tax, regardless of whether the personal property becomes part of the real property. On-site assembly that does not involve affixing the tangible personal property to real property is not installation within the meaning of this rule.

B. Charges for labor to repair, renovate, wash, or clean.

1. Charges for labor to repair, renovate, wash, or clean tangible personal property are subject to sales tax. Parts or materials used to repair, renovate, wash, or clean tangible personal property that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) Labor for cleaning and blocking hats is taxable under the provisions of the act imposing a tax on dry cleaning services.

b) Motor vehicles, trailers, contractors' equipment, drilling equipment, commercial equipment, railroad cars and engines, radio and television sets, watches, jewelry, clothing and accessories, shoes, tires and tubes, office equipment, furniture, bicycles, sporting equipment, boats and household appliances not permanently attached to a house or building are examples of tangible personal property upon which the sales or use tax applies when repaired, washed, cleaned, renovated, or installed in connection with other tangible personal property.

c) Labor charges for cleaning and washing tangible personal property held in resale inventory are not taxable. An example is the cleaning, washing, or detailing of a new or used car in a dealer's inventory.

2. Charges for labor to service, repair or renovate real property, improvements, or items of personal property that are attached to real property so as to be considered real property are not subject to sales tax. The determination of whether parts, materials or other items are sold or used in the service, repair, or renovation of real property shall be made in accordance with R865-19S-58. Exempt labor charges must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) For purposes of B., fixtures, trade fixtures, equipment, or machinery permanently attached to real property shall be treated as real property while so attached, but shall revert to personal property when severed from the real property.

b) Mere physical attachment is not enough to indicate permanent attachment. Portable or movable items that are attached merely for convenience, stability or for an obvious temporary purpose are considered personal property, even when attached to real property.

c) An item is considered permanently attached if:

(i) attachment is essential to the operation or use of the item and the manner of attachment suggests that the item will remain affixed in the same place over the useful life of the item; or

(ii) removal would cause substantial damage to the item itself or require substantial alteration or repair of the structure to which it is affixed.

d) If an item is attached to real property so that it is treated as real property for purposes of this rule, its accessories are also treated as real property if the accessories are essential to the operation of the item and installed solely to serve the operation of the item.

e) An item or part of an item may be temporarily detached from real property for on-site repairs without losing its real property status, but an item that is detached from the premises and removed from the site temporarily or permanently reverts to personal property.

C. Charges made for lubrication of motor vehicles are taxable as sales of tangible personal property.

D. Sales of extended warranty agreements.

1. Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

2. Extended warranties on items of tangible personal

property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions:

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

B. Tax shall not apply where residency is maintained continuously under the terms of a written agreement for 30 days or more.

1. The written agreement must identify the specific room, apartment, unit, trailer, or space to park a trailer that will be occupied for the period.

2. The accommodations or services must be billed at a specified monthly rate and not at an accumulation of daily rates.

R865-19S-80. Printers, Typesetters, Typographers, Engravers, and Related Graphic Arts Industries Pursuant to Utah Code Ann. Section 59-12-103.

A. "Printer" means anyone reproducing multiple copies of images, regardless of the process employed or by what name they may be designated - such as letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, lettership, etc.

B. Charges for printing, lithography, silk-screen printing, imprinting, multilithing, multigraphing, mimeographing, duplicating, photostating, steel-die engraving, photoengraving, embossing, and similar operations are taxable even though the paper may be furnished by the consumer.

C. Services in connection with the sale of printed matter, such as cutting, folding, binding, addressing, and mailing are taxable. Envelopes used in connection therewith are taxable, but actual postage charges are exempt.

D. Printers may purchase tax free for resale any materials, such as paper and ink that become a component part of the finished goods they resell. Printers are consumers and must pay tax on all materials and equipment purchased for their own use if they retain title to the tangible personal property.

E. Printers may purchase tax free reusable pre-press materials, such as composition, electrotypes, stereotypes, mats, photoengravings, electronic engravings, rubber plates, plastic plates, silk screens, steel dies, brass dies, cutting dies, lithographic plates, artwork, transparencies, negatives, positives, punched tape, magnetic electronic tape, duplicating masters, stencils, reproduction proofs used in the preparation of printed matter for resale provided title to said tangible personal property passes to the customer.

1. The tax applies to the printer's charge to the customer for such material in addition to charges for printed matter in connection with which they are sold.

2. The printer's invoice must contain a statement on its face, that states that reusable pre-press materials associated with that transaction are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of those items if so desired.

3. If the printer's customer is purchasing printed material for resale, sales tax is still applicable to the selling price of these materials which are not to be resold, and in this case, the charges must be separately priced so that tax will be properly charged.

4. If printing work is shipped outside of the state of Utah and interstate sale exemption applies, the charges for plates, dies, negatives, and similar items are exempt only if these items are physically shipped out-of-state with the printed material. If these items are retained in Utah by the printer for any reason, the interstate commerce exemption does not apply. Charges for these items must be separately priced, and tax collected on these charges.

F. Engravers, photoengravers, typesetters, typographers, artists, and other vendors furnishing materials to printers are required to charge tax unless the printer furnishes them a resale exemption certificate.

1. If a printer purchases materials tax free under a resale-exemption certificate, any such materials used or consumed by him and not resold must be reported by the printer on a tax return as "goods consumed" and the tax paid thereon.

G. Charges for typography or type composition are not subject to tax, provided that title to the materials does not pass from the typesetter to the customer.

1. The retention of title by the typographer or typesetter may be established by issuance of credit slips to show the return of type metal.

2. Typographers and typesetters are consumers of all materials to which they retain title, including type, metal forms, machinery galleys, and similar properties.

3. They are also consumers of ink, film, chemicals, proofing paper, and other supplies which they use in the rendition of their services and must pay the tax on the purchase price of such items.

H. Galley proofs furnished at no extra charge are not taxable. Reprints or proofs in quantity are printed matter, and any charges made are taxable.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104.

A. Definitions:

1. "De minimis" means that an item's use in nonqualifying activities is inconsequential in relation to the items's use for qualifying activities.

2. "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite

offices), each physical location is considered separately from any other locations operated by the same business.

3. "Machinery and equipment" means:

a) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

b) any peripheral device that is essential to a continuous manufacturing process. Qualifying peripheral devices include bits, jigs, molds, or devices that control the operation of machinery and equipment, but do not include gas, water, or electricity systems that constitute real property improvements as provided in B.

4. "Manufacturer" means a person who functions within a manufacturing facility.

5.a) "New or expanding operations" means:

(i) the creation of a new manufacturing operation in this state; or

(ii) the expansion of an existing Utah manufacturing operation if the expanded operation increases production capacity or is substantially different in nature, character, or purpose from that manufacturer's existing Utah manufacturing operation.

b) The definition of new or expanding operations is subject to limitations on normal operating replacements.

c) A manufacturer who closes operations at one location in this state and reopens the same operation at a new location does not qualify for the new or expanding operations sales and use tax exemption without demonstrating that the move meets the conditions set forth in A.5.a). Acquisitions of machinery and equipment for the new location may qualify for the normal operating replacements sales and use tax exemption if they meet the definition of normal operating replacements in A.6.

6. "Normal operating replacements" includes:

a) new machinery and equipment or parts, whether purchased or leased, that have the same or similar purpose as machinery or equipment retired from service due to wear, damage, destruction, or any other cause within 12 months before or after the purchase date, even if they improve efficiency or increase capacity.

b) if existing machinery and equipment or parts are kept for backup or infrequent use, any new, similar machinery and equipment or parts purchased and used for the same or similar function.

B. The sales and use tax exemptions for new or expanding operations and normal operating replacements apply only to purchases or leases of tangible personal property used in the actual manufacturing process. The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted. If a separate gas, water, or electrical supply line is installed solely for the operation of the manufacturing equipment, the gas, water, or electrical supply line is an accessory to the manufacturing equipment rather than a part of the real property.

C. Machinery and equipment or normal operating replacements used for an activity that is not part of the manufacturing process are not exempt unless the use in the nonqualifying activity is de minimis. Examples of nonqualifying activities include:

1. research and development;

2. refrigerated or other storage of raw materials, component parts, or finished product; or

3. shipment of the finished product.

D. Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment or normal operating replacements purchased for use in the manufacturing operation are eligible for the sales and use tax exemption for new or expanding operations or for normal operating replacements if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

1. Each activity is treated as a separate and distinct establishment if:

a) no single SIC code includes those activities combined; or

b) each activity comprises a separate legal entity.

2. Machinery and equipment or normal operating replacements used in both manufacturing activities and nonmanufacturing activities qualify for the exemption for new or expanding operations or for normal operating replacements only if the use in nonmanufacturing activities is de minimis.

E. Purchases of qualifying machinery and equipment or normal operating replacements are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation. Charges for labor to repair, renovate, or install tangible personal property shall be taxable or tax exempt as provided in R865-19S-78.

F. The manufacturer shall retain records to support the claim that the machinery and equipment or normal operating replacements are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

G. Vendors are required to obtain a tax exemption certificate upon which the purchaser certifies that the use of the machinery and equipment or normal operating replacements qualifies for exemption under Title 59, Chapter 12. Vendors must obtain a separate tax exemption certificate, or a purchase order that incorporates the appropriate language, including authorized signature, date and title, of the tax exemption certificate, from the purchaser for each purchase of exempt machinery and equipment, at the time of purchase.

H. If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a vendor who meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a vendor is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A vendor who meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Vendors who are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the vendor no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Vendors who elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

3. Vendors who elect to file and remit sales taxes on a monthly basis are entitled to reimbursement for the cost of collecting and remitting sales taxes on a monthly basis.

F. Vendors who are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a vendor's request is approved and the vendor does accumulate a $50,000 sales tax liability, a similar request by that vendor the following year shall be denied.

G. No reimbursement is allowed for the monthly filing and remittance of waste tire fees or transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes.

H. Only vendors who file monthly and remit on a timely basis and in the required manner, are entitled to reimbursement for the cost of collecting and remitting sales taxes.

I. Vendors who are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those vendors who are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Vendors who receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

J. Vendors who are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

K. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in K.2., vendors shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a vendor may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

L. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in K. Use of any manner of remittance other than that specified in K. must be approved by the Tax Commission prior to its use.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. As used in Utah Code Ann. Section 59-12-104(6), and for the purpose of this rule:

1. "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

2. "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

3. "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

4. "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special

purpose testing in the development or production of peculiar supplies or services.

B. The effective date of this rule is July 1, 1986.

R865-19S-90. Telephone Service Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Private communication services" means a telephone service that entitles subscribers or users to use of a communication line or channel or group of lines or channels.

4. "Telephone corporation" means any corporation owning, controlling, operating or managing any telephone service for the shared use with or resale to any person on a regular basis whether or not regulated by the Public Service Commission.

5. "Telephone service" means the transmission for hire of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, cable, radio waves, microwaves, light waves, satellite, fiber optics, or any other method now in existence or that may be devised, and includes:

a) cellular telephone service and cellular telephone service contracts;

b) private communications services;

c) automated digital telephone answering services; and

d) pager services.

B. Taxable telephone service charges include:

1. subscriber access fees;

2. charges for optional telephone features, such as call waiting, caller i.d., and call forwarding; and

3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) install or repair telephone equipment that retains its character as tangible personal property under R865-19S-58 and R865-19S-78.

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;

2. charges for interstate long distance or toll calls;

3. telephone answering services received or relayed by a human operator;

4. charges to install or repair subscriber equipment that is regarded as real property under R865-19S-58 and R865-19S-78;

5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;

6. subscriber charges for cable or satellite television transmissions; and

7. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(17) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions:

1. "Canned computer software" or "prewritten computer software" means a program or set of programs that can be purchased and used without modification and has not been prepared at the special request of the purchaser to meet their particular needs.

2. "Custom computer software" means a program or set of programs designed and written specifically for a particular user. The program must be customer ordered and can incorporate preexisting routines, utilities or similar program components. The addition of a customer name or account titles or codes will not constitute a custom program.

3. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

4. "License agreement" means the same as a lease or rental of computer software.

5. "Tangible personal property" includes canned computer software.

B. The sale, rental or lease of canned or prewritten computer software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred. Payments under a license agreement are taxable as a lease or rental of the software package. Charges for software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of canned or prewritten software are taxable.

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

D. Charges for services to modify or adapt canned computer software or prewritten computer software to a purchaser's needs or equipment are not taxable if the charges are separately stated and identified.

E. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

F. This rule cites the most common types of transactions involving computer software and it should not be construed to be all inclusive but merely illustrative in nature.

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Sections 26-32a-101 through 26-32a-113.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

A. Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill and which are required to be paid, unless the total amount of the gratuity or tip is passed on to the waiter or waitress who served the customer. Tax on the required gratuity is due from private clubs, even though the club is not open to the public. Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

B. Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales to Nonresidents of Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

A. Definitions.

1. "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or any group or combination, acting as a unit.

2. "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

3. "Vehicle" means a motor vehicle, trailer, semitrailer, off-highway vehicle, boat, boat trailer, or outboard motor.

B. In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-104(9) and 59-12-104(32), a person may not:

1. be a resident of this state. The fact that a person leaves the state temporarily is not sufficient to terminate residency;

2. be engaged in intrastate business and operate the purchased vehicle as part of the business within this state;

3. maintain a vehicle with this state designated as the home state;

4. except in the case of a tourist temporarily within this state, own, lease, or rent a residence or a place of business within this state, or occupy or permit to be occupied a Utah residence or place of business;

5. except in the case of an employee who can clearly demonstrate that the use of the vehicle in this state is to commute to work from another state, be engaged in a trade, profession, or occupation or accept gainful employment in this state;

6. allow the purchased vehicle to be kept or used by a resident of this state; or

7. declare residency in Utah to obtain privileges not ordinarily extended to nonresidents, such as attending school or placing children in school without paying nonresident tuition or

fees, or maintaining a Utah driver's license.

C. A nonresident owner of a vehicle described in Section 59-12-104(9) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

D. A nonresident owner of a vehicle described in Subsection 59-12-104(32) may continue to qualify for the exemption provided by that section if use of the vehicle in this state does not exceed 14 days in any calendar year and is nonbusiness in nature.

E. Vehicles are deemed not used in this state beyond the necessity of transporting them to the borders of this state if purchased by:

1. a nonresident student who will be permanently leaving the state within 30 days of the date of purchase; or

2. a nonresident member of the military stationed in Utah, but with orders to leave the state permanently within 30 days of the date of purchase.

F. Purchasers claiming this exemption must complete a nonresident affidavit. False, misleading, or incomplete responses shall invalidate the affidavit and subject the purchaser to tax, penalties, and interest.

G. A dealer of vehicles who accepts an incomplete affidavit, may be held liable for the appropriate tax, interest, and penalties.

H. A dealer of vehicles who accepts an affidavit with information that they know or should have known is false, misleading or inappropriate may be held liable for the appropriate tax, interest, and penalties.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104(26), (28).

A. No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of such payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

A. Document preparation fees assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax if they satisfy both of the following conditions:

1. Fees must be separately identified and segregated.

2. Fees may not be included in the total sale price upon which sales tax is calculated and collected.

B. State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303 and 10-1-306.

A. Definitions.

1. "Energy supplier" includes an entity that bills a consumer for transportation costs incurred in providing taxable energy to that consumer.

2. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, the delivered value shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the meter unless the taxpayer

demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. A user of taxable energy who purchases taxable energy from a supplier that is not collecting the municipal energy sales and use tax for the municipality or Tax Commission shall accrue the tax on the taxable energy it uses and remit that tax to the Tax Commission:

a) on forms provided by the Tax Commission, and

b) at the time and in the manner it remits sales tax to the Tax Commission.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-105. Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902.

A. A qualified emergency food agency may apply to the Tax Commission for a refund of Utah sales and use taxes paid on food donated to that entity no more often than on a monthly basis. Refund applications should be submitted to the Tax Commission by the tenth day of the month for a timely refund.

B. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

C. Original records supporting the refund claim must be maintained by the qualified emergency food agency for three years following the date of refund.

D. Failure to pay any penalties and interest assessed by the Tax Commission may subject the qualified emergency food agency to a deduction from future refunds of amounts owed.

KEY: charities, tax exemptions, religious activities, sales tax
August 11, 1998 10-1-303
Notice of Continuation May 22, 1997 10-1-306
26-32a-101 through 26-32a-113
59-1-210
59-12

R865. Tax Commission, Auditing.
R865-25X. Brine Shrimp Royalty.
R865-25X-1. Brine Shrimp Royalty Procedures Pursuant to Utah Code Ann. Section 59- 23-4.

A. "Gross weight" means the raw, wet, harvested weight of the unprocessed brine shrimp eggs as reported to the Division of Wildlife Resources, and includes any biomass or refuse harvested with the brine shrimp eggs.

B. A harvester of brine shrimp eggs shall calculate the net weight of unprocessed brine shrimp eggs harvested by multiplying the gross weight by .60.

C. Prior to January 31 of each year, a harvester shall file a report with the Tax Commission, on a form prescribed by the Tax Commission, containing the following information:

1. the net weight of unprocessed brine shrimp eggs harvested during the current harvest season and sold in arm's length transactions prior to submitting the report;

2. the total proceeds received prior to January 31 for the unprocessed brine shrimp eggs sold in C.1; and

3. proceeds received since the last January 31 reporting period for unprocessed brine shrimp eggs harvested in prior harvest seasons.

D. The Tax Commission shall annually determine the unit value of unprocessed brine shrimp eggs by dividing the aggregate proceeds reported by all harvesters under C.2. and C.3. by the aggregate net weight reported by all harvesters under C.1.

KEY: brine shrimp royalty
August 11, 1998 **59-23-4**

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108.

A. To title or register a vehicle previously registered in a nontitle state, an applicant must submit both of the following:

1. the last certificate of registration;

2. a lien search from the recording jurisdiction or an "Affidavit of Ownership" in lieu of the lien search.

B. To title or register a repossessed vehicle, an applicant must submit both of the following:

1. the outstanding certificate of title, with the lien recorded in favor of the repossessor;

2. an approved affidavit of repossession, signed by the lien holder recorded on the certificate of title.

C. To title or register a vehicle previously owned by the U.S. Government, an applicant must submit a Certificate of Release of a Motor Vehicle, Standard Form No. 97.

D. To title or register a vehicle foreclosed by advertisement, an applicant must submit each of the following:

1. a certificate of sale bearing the notarized signature of the person who conducted the sale. The certificate must contain the following information:

a. date of sale;

b. name of person to whom the vehicle was sold;

c. complete description of the vehicle;

d. amount due on the contract;

e. date that the amount due became delinquent; and

f. amount received from the sale of the vehicle.

2. a copy of the notice sent to the owner and lien holder of record;

3. proof that notice was published two consecutive weeks prior to sale. If the notice was not published in a newspaper, an affidavit of posting of notices must be furnished. Posting must be at least ten days prior to sale.

E. To title or register a vehicle transferred by divorce decree an applicant must submit each of the following:

1. a certified copy of the divorce decree;

2. the outstanding certificate of title;

3. the last registration certificate.

F. To title or register a vehicle when the current owner is declared incompetent, an applicant must submit each of the following:

1. the outstanding certificate of title, endorsed for transfer by the guardian;

2. the last registration certificate;

3. a certified copy of the court order appointing the guardian.

G. To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

1. legal basis under which the vehicle was impounded and sold:

2. a complete description of the vehicle;

3. name of the purchaser;

4. the notarized signature of the state, city, or county official who conducted the sale.

H. To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the properly notarized power of attorney to the Tax Commission.

I. To title or register a vehicle transferred from a deceased owner when a survivorship affidavit is not applicable, the applicant must submit the outstanding certificate of title and the last registration card. In addition, the applicant must submit one of the following:

1. a certified copy of the final decree of distribution;

2. an order from the court confirming sale;

3. an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

a. When the title is issued in joint ownership where the owners names are connected with "and" or a "/" the survivor may transfer ownership by endorsement only and by furnishing proof of death of the other joint owner.

J. The Tax Commission may issue a title or a dismantle permit upon receipt of a court order or upon receipt of an affidavit and surety bond when satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership.

1. The affidavit must contain each of the following:

a) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;

b) an explanation of how the vehicle was obtained and from whom;

c) a statement indicating any outstanding liens or encumbrances on the vehicle;

d) a statement indicating where the vehicle was last titled or registered;

e) a description of the vehicle;

f) any other items pertinent to the acquisition or possession of the vehicle.

2. The Tax Commission may issue a title or a dismantle permit upon receipt of an affidavit and an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit if the vehicle satisfies each of the following conditions:

a) the vehicle is not a motorcycle;

b) the vehicle has a value of $1,000 or less at the time of application;

c) the vehicle is six model years old or older.

3. If the vehicle has a value of $1,000 or less at the time of application, and the vehicle is not more than six model years old, or the vehicle is a motorcycle, a title or dismantle permit may not be issued until the vehicle is physically examined by a qualified investigator appointed by the Tax Commission.

4. If the vehicle has a value in excess of $1,000, the Tax Commission may require a surety bond in addition to the affidavit. The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the Tax Commission.

K. To title or register a specially constructed or rebuilt vehicle, an applicant shall furnish an affidavit of construction, explaining the acquisition of essential parts and the date construction was completed. The affidavit must be supported by bills of sale or invoices for the parts.

1. An application for an identification number must be completed. The assigned number shall be affixed to the vehicle and inspected by a peace officer or an authorized agent of the Tax Commission.

2. The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

3. If satisfactory evidence of ownership is lacking, the procedure outlined in J. shall be followed.

4. In the case of a dune buggy or similar type vehicle where the complete running gear and chassis of another vehicle is used, the identification number of the vehicle used as the primary base of the rebuilt vehicle shall be used for identification and must correspond to the identification number on the surrendered certificate of title.

5. The rebuilt vehicle shall retain the manufacturer's name as it appeared on the surrendered title. However, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission. The type of body and vehicle model may be changed to more accurately describe the vehicle. If a new body is used, the year model shall be determined by the date the rebuilding is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

R873-22M-7. Transfer of License Plates and Registration for an Increase of Gross Laden Weight Pursuant to Utah Code Ann. Section 41-1a-701.

A. License plates and registration may not be transferred under any of the following conditions:

1. The license plates are lifetime trailer plates issued pursuant to Section 41-1a-228.

2. The newly acquired vehicle requires a different registration period from that of the vehicle previously owned.

B. License plates may be transferred only if the application for transfer is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce, or court order.

C. Transferred license plates may not be displayed upon the newly acquired vehicle until the registration has been completed and a new registration card has been issued.

D. The expiration date on the new registration card shall be the same as that appearing on the original registration.

E. If registration is based on gross laden weight and the gross laden weight of a vehicle is increased during the registration year, additional registration fees shall be collected based on the following computations:

1. Subtract the registration fee for the current year from the registration fee for the increased weight.

2. Multiply that difference by the percentage of the year for which the vehicle will be registered at the increased weight.

F. The holder of a three-month registration who seeks to increase the gross laden weight of a vehicle shall pay the full three-month registration fee for the increased weight.

R873-22M-8. Expiration of Registration Pursuant to Utah Code Ann. Sections 41-1a-211 and 41-1a-215.

A. Registration issued for a period of three calendar months, six calendar months, or nine calendar months, shall expire at midnight on the last day of the third, sixth, or ninth calendar month from the date issued.

B. If an unexpired registration issued for three calendar months, six calendar months, or nine calendar months is being renewed, the expiration date shall be three calendar months, six calendar months or nine calendar months from the month the previous registration would have expired.

C. When a temporary permit is issued as authorized under Section 41-1a-211, the registration period shall begin on the first day of the calendar month in which the first temporary permit was issued.

R873-22M-11. Copies of Registration Cards Pursuant to Utah Code Ann. Section 41-1a-214.

A. In lieu of an original registration card, a copy of a registration card may be carried in a vehicle owned or leased by this state or any of its political subdivisions. Both the front and back of the registration card must be copied.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a county decal, month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The county decal shall be displayed on the license plate in the left position, the month decal in the middle position, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, county decal, month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

R873-22M-15. Assigned and Replacement Vehicle Identification Number System Pursuant to Utah Code Ann. Section 41-1a-801.

A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.

B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2, to determine ownership.

C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.

1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.

2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN.

3. The VIN plate must, under the supervision of the Tax Commission, be attached to the unit as follows:

a) passenger and commercial vehicles:

(1) primary location is on a portion of the left front door lock post;

(2) secondary location is on a portion of the firewall, either left or right side, whichever is most advantageous; (This location is to be selected only when the VIN plate cannot be attached to the lock posts.)

b) motorcycles, snowmobiles, and outboard motors:

(1) as near as possible to the original number location; (If an original number, the VIN plate shall be affixed to the headstock.)

c) trailers:

(1) primary location is on a portion of the right side of the tongue or drawbar near the body;

(2) secondary location is on a portion of the metal frame near the front right corner;

d) on units where it is not practical to install rivets, the VIN plate may be attached by adhesive only.

D. The Motor Vehicle Division is responsible for the control, security, and distribution of the VIN plates and will keep the necessary records and require regular reports from designated branch offices.

E. Following are the specifications of the official Utah assigned identification plate and attachment accessories.

1. Size will be 1 inch x 3 inches x .003 inch deep etched to .002 inch with 1/8 inch radius corners.

2. Material will be color anodized aluminum foil.

3. Color will be blue background with silver lettering.

4. Backing will be laminated with permanent pressure sensitive adhesive.

5. Control numbers will be serialized with 1/8 inch permanent embossed or anodized numbers.

6. The state seal will be in the left center, with appropriate rivet areas designated.

7. The assigned number will be prestamped using the prefix of "UT." The number series to include one letter and five digits with the letter to identify the unit type as follows:

TABLE

a)	Passenger and Commercial	P00001
b)	Motorcycles	M00001
c)	Trailers	T00001
d)	Reconstructed vehicle	R00001
e)	Outboard Motors	E00001
f)	Snowmobiles	S00001

R873-22M-16. Authorization to Issue a Certificate of Title Pursuant to Utah Code Ann. Section 41-1a-104.

A. A lienholder who lawfully repossesses a vehicle may apply for a certificate of title by paying the title fee and filing all of the following documents:

1. the outstanding Utah certificate of title showing the lien recorded;

2. a notarized affidavit of repossession, signed by the lienholder of record;

3. an application for title, properly signed and notarized.

B. If the purpose of the certificate of title is to record a new lien, or to rerecord a lien, and there is no change in the registered owner, all of the following are required:

1. the outstanding Utah certificate of title showing a release of all prior liens;

2. an application for title, properly signed and notarized;

3. the title fee.

C. In order to issue a new certificate of title showing the assignee as the lienholder, an applicant shall submit all of the following:

1. the outstanding Utah certificate of title with the lien recorded;

2. an application for title showing the registered owner and the new lienholder;

3. the title fee.

D. In lieu of the required owner's signature under Subsection C.2., the application may be stamped "Assignment of Lien Pursuant to Section 41-1a-607."

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

A. An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

1. The yard must be identified by a conspicuously placed, well-maintained sign that:

a) is at least 24 square feet in size;

b) includes the business name, address, phone number, and hours of business; and

c) displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.

2. The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.

3. The yard must have adequate lighting.

4. A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.

5. Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.

6. An office shall be located on the premises of the yard.

a) The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.

b) If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.

c) If a central office is approved under Subsection 6.b) above, the signs of all storage areas must provide the location of the office.

7. The yard shall provide compressed air and battery boosting capabilities at no additional cost.

B. Persons who can demonstrate an ownership interest in a car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

1. An individual has ownership interest in the vehicle if he:

a) is listed as a registered owner or lessee of the vehicle; or

b) has possession of the vehicle title.

2. An individual must show picture identification as evidence of his ownership interest.

3. The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

C. Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

D. Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the Tax Commission at the time the vehicles are sold.

E. The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the Tax Commission.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 2-1-7, 2-1-7.5, 2-1-7.6, and 2-1-7.7.

A. "Aircraft" is as defined in Section 2-1-1.

1. Aircraft includes fixed wing airplanes, balloons, airships, and any other contrivance subject to the registration requirements of the Federal Aviation Administration (FAA).

2. Aircraft does not include ultralight vehicles or hang gliders.

B. For purposes of this rule, all aircraft that meet requirements for registration by the FAA are subject to annual registration in this state. FAA registration documents must be made available for review at the time application for state registration is made.

C. The registration period is from January 1 through December 31. Newly purchased aircraft and aircraft moved to Utah from another state shall be registered immediately. A grace period to January 31 is allowed for renewal registrations.

D. A registration fee shall be collected at the time of registration. This fee shall be paid every time the registration changes and every time the registration is renewed.

E. Aircraft assessed as part of an airline by the Tax Commission are exempt from the registration requirements of Section 2-1-7. Aircraft centrally assessed by the Tax Commission and not part of an airline remain subject to taxation as property and are subject to the registration requirements of Section 2-1-7.

F. Aircraft not legally registered are subject to seizure and impound under the provisions of Section 2-1-7.7.

G. The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.

H. The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal. Decals must be applied and maintained in a manner that permits identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

R873-22M-22. Salvage Certificate and Branded Title Pursuant to Utah Code Ann. Sections 41-1a-522, 41-1a-1001, 41-1a-1004, and 41-1a-1009 through 41-1a-1011.

A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.

B. The Utah registration of a vehicle qualifying for any of the following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:

1. salvage vehicle,

2. dismantled vehicle,

3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;

4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and

5. manufacturer buyback nonconforming vehicle.

C. For purposes of Section 41-1a-1001, the cost to repair or restore a vehicle for safe operation is the total cost shown on a certified and notarized repair order or estimate from an authorized representative of an insurance adjusting firm, or a bonded Utah automobile dealer or body shop. The repair order or estimate must be current at the time of application and must show all costs, including a detailed list of all parts, materials, and labor, required to repair the vehicle.

R873-22M-23. Registration Information Update for Vintage Vehicle Special Group License Plates Pursuant to Utah Code Ann. Section 41-1a-1209.

A. The registration information update for vintage vehicle plates required by Section 41-1a-1209 shall be due on July 1,

1995, and every five years thereafter.

R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.

A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration.

1. Cosmetic repairs include:

a) cracks or chips in windows if the vehicle will pass a safety inspection;

b) paint chips or scratches that do not extend below the rust preventive primer coating;

c) decals or decorative paint;

d) decorative molding and trim made from plastic, light metal, or other similar material;

e) hood ornaments;

f) wheel covers;

g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;

h) vinyl roof covers or imitation convertible tops;

i) rubber inserts in bumpers or bumper guards; and

j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.

2. Cosmetic repairs do not include:

a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;

b) repair or replacement of any sheet metal;

c) repair or replacement of exterior or interior body panels;

d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and

e) cracks or chips in windows if the vehicle will not pass a safety inspection.

3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division.

B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:

1. Mitchell Collision Estimating Guide;

2. Motor Estimating Guide;

3. Delmar Auto Series Complete Automotive Estimating;

4. CCC Autobody Systems EZEst Software;

5. ADP Collision Estimating Services; or

6. an equivalent estimating guide recognized by the industry.

C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.

R873-22M-25. Written Notification of a Salvage Certificate or Branded Title Pursuant to Utah Code Ann. Section 41-1a-1004.

A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

B. Written notification that a vehicle has been issued a salvage certificate or branded title shall be made to a prospective purchaser on a form approved by the Administrator of the Motor Vehicle Enforcement Division.

C. The form must clearly and conspicuously disclose that the vehicle has been issued a salvage certificate or branded title.

D. The form must be presented to and signed by the prospective purchaser and the prospective lienholder, if any, prior to the sale of the vehicle.

E. If the seller of the vehicle is a dealer, the form must be prominently displayed in the lower passenger-side corner of the windshield for the period of time the vehicle is on display for sale.

F. The original disclosure form shall be given to the purchaser and a copy shall be given to the new lienholder, if any. A copy shall be kept on file by the seller for a period of three years from the date of sale if the seller is a dealer.

R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.

A. Each certified vehicle inspector shall independently determine:

1. if one or more interim inspections are required; and

2. when any required interim inspection shall be made.

B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.

C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").

1. Repairs must be performed in licensed body shops.

2. All repairs must be certified by an individual who:

a) owns or is employed by that body shop;

b) has repaired the vehicle or supervised any repairs he did not make;

c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and

d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.

D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.

E. A person who repairs or replaces major damage identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.

R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-408, 41-1a-409 and 41-1a-414.

A. Legislature special group license plates shall be issued to current members of the Utah Legislature upon application and payment of the applicable fees.

1. These special group license plates shall carry the letter

combination SEN or REP with the number of the district from which the legislator was elected or appointed.

2. State legislators may, upon payment of the requisite registration fees, register a maximum of two vehicles with legislature special group license plates.

3. Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year. Legislators leaving office or not reelected to office shall be issued regular license plates at no charge.

B. United States Congress special group license plates shall be issued to current members of the United States Congress upon application and payment of the applicable fees.

1. These special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

2. Upon leaving office, members of Congress may not display United States Congress special group license plates on any motor vehicle. Members of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year. Members of Congress leaving office or not reelected to office shall be issued regular license plates at no charge.

C. Survivor of the Japanese attack on Pearl Harbor special group license plates shall be issued to qualified U.S. military veterans upon application and payment of the applicable fees.

1. Only those U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service, or who present evidence of membership in the Pearl Harbor Survivors Association, qualify for issuance of this special group license plate.

2. Motor vehicles displaying these plates shall be registered and titled in, or registered and leased in, the name of the veteran or the veteran and the spouse. Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special license plates so long as the surviving spouse remains unmarried.

D. Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans upon application and payment of the applicable fees.

1. Only those U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating that the veteran was classified as a prisoner of war qualify for issuance of this special group license plate.

2. Motor vehicles displaying these plates shall be registered and titled in, or registered and leased in, the name of the veteran or the veteran and the spouse. Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special license plates so long as the surviving spouse remains unmarried.

E. Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans upon application and payment of the applicable fees.

1. Only those U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart, or who present evidence of current membership in the Military Order of the Purple Heart, qualify for issuance of this special group license plate.

2. Motor vehicles displaying these plates shall be registered and titled in, or registered and leased in, the name of the veteran or the veteran and the spouse. Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special license plates so long as the surviving spouse remains unmarried.

F. National Guard special group license plates shall be issued to active members of the Utah National Guard upon application and payment of the applicable fees.

1. To qualify for this special group license plate, applicants must present a current military identification card which shows active membership in the Utah National Guard.

G. Disabled special group license plates shall be issued to persons with disabilities which limit or impair their ability to walk and for vehicles that are used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk, upon application and payment of the applicable fees.

1. Persons with disabilities which limit or impair the ability to walk as defined in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991), which is adopted and incorporated by reference.

2. An applicant for this special group license plate shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

3. The Tax Commission may, on a case by case basis, issue disabled special group license plates to persons with disabilities other than disabilities which limit or impair the ability to walk.

4. The fee for the issuance of a handicapped person special group license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

5. A physician's certification is not required for renewal of the special group license plate.

H. Collegiate special group license plates shall be issued in accordance with Section 41-1a-408 upon application and payment of the applicable fees.

I. Wildlife special group license plates shall be issued in accordance with Section 41-1a-408 upon application and payment of the applicable fees.

J. Special interest vehicle special group license plates shall be issued to owners of qualified vehicles upon application and payment of the applicable fees.

1. To qualify for this special group license plate, a vehicle must meet the definition of special interest vehicle as that term is defined in Section 41-1a-102.

K. Vintage vehicle special group license plates shall be issued to owners of qualified vehicles upon application and

payment of the applicable fees.

1. To qualify for this special group license plate, a vehicle must meet the definition of vintage vehicle as that term is defined in Section 41-21-1.

L. Licensed amateur radio operator special group license plates shall be issued to qualified individuals upon application and payment of the applicable fees.

1. To qualify for this special group license plate, applications must present a current Federal Communication Commission (FCC) license.

2. The alpha and numeric sequence of these plates shall be the same combination of alpha and numeric characters that comprise the radio call sign of the licensed operator. The first letter shall be either A, K, N, or W. The next characters shall be the combination of letters or figures assigned by the FCC to the licensed operator as indicated upon the licensed operator's FCC license.

3. A maximum of one vehicle may be registered per FCC license.

M. Farm vehicle special group license plates shall be issued to owners of qualified vehicles upon application and payment of the applicable fees.

1. To qualify for this special group license plate, vehicles with a gross vehicle weight rating of 12,001 pounds or more must meet the criteria for farm truck, as that term is defined in Section 41-1a-102, and furnish a completed Farm Truck Affidavit, Form TC-838, at the time of application.

2. To qualify for this special group license plate, vehicles with a gross vehicle weight rating of 12,000 pounds or less must provide an emission test certificate or a county-issued certificate of exemption from emission inspection requirements at the time of application.

N. Firefighter special group license plates shall be issued to qualified individuals upon application and payment of the applicable fees.

1. To qualify for this special group license plate, applicants must present one of the following:

a) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

b) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

c) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

d) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

O. In addition to the special group license plates listed above, any organization that makes a significant contribution promoting the education, economy, or social image of this state may request the Tax Commission to authorize a special group license plate for the organization.

1. The contribution must be the result of the organization's primary purpose.

2. Organizations may apply to the Tax Commission in letter form for preliminary approval of their request for a special group license plate. Each such application must be accompanied by an artist's color rendering of the proposed symbol and the group's identifying slogan. Final approval of the symbol and slogan rests with the Tax Commission.

3. Organizations whose requests for special group license plates are approved by the Tax Commission shall acquire the applications and fees prescribed in Sections 41-1a-408 and 41-1a-1216 and submit those applications and fees to the division for processing.

4. At the discretion of the requesting organization, special group license plates issued under this paragraph may be restricted to individuals meeting requirements formulated by that organization.

5. Once a restricted special group license plate has been issued by the division, all requests to the division for that license plate must be accompanied by a letter of authorization from the organization requesting that restricted special group license plate.

P. An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must reregister the vehicle and obtain new license plates. Unless otherwise provided in this rule, the division shall collect a replacement fee prior to issuing regular issue license plates to the disqualified individual.

Q. Except as otherwise provided, all special group license plates, including personalized special group license plates, shall consist of a symbol, affixed to the left-hand side of the plate, followed by five characters. The first four characters shall be numbers and the fifth shall be a letter. Plates shall be distributed consecutively.

R. Unless otherwise prohibited by statute, the division may enact procedures to recall all special license plates currently in use. The division shall replace the recalled plates with the special group license plates enumerated in this rule, free of charge.

R873-22M-28. Option to Exchange Horseless Carriage License Plates Issued Prior to July 1, 1992, Pursuant to Utah Code Ann. Section 41-1a-409.

A. The registered owner of a vehicle that is forty years old or older and for which a horseless carriage license plate was issued prior to July 1, 1992, may exchange that plate at no charge for a vintage vehicle special group license plate issued after July 1, 1992.

R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-408.

A. A removable windshield placard is a two-sided placard, renewable on an annual basis, which includes on each side:

1. the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

2. an identification number;

3. a date of expiration which is one year from the later of the initial issuance of the placard or the most recent renewal of the placard; and

4. a facsimile of the Great Seal of the State of Utah.

B. Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

1. The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

2. An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

3. A physician's certification is not required for renewal of a removable windshield placard.

4. The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

5. The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

C. A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

1. the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

2. an identification number;

3. a date of expiration not to exceed six months from the date of issuance; and

4. a facsimile of the Great Seal of the State of Utah.

D. Upon application, a temporary removable windshield placard shall be issued.

1. The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

2. Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

3. The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

4. The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

E. Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

R873-22M-30. Standards for Issuance of Original Issue License Plates Pursuant to Utah Code Ann. Section 41-1a-416.

A. "Series" means the general alpha-numeric sequence from which plate numbers are assigned.

B. An original issue license plate is unique and does not conflict with existing plate series in the state if the particular plate number is not currently registered or displayed on the motor vehicle master file record.

R873-22M-31. Determination of Special Interest Vehicle Pursuant to Utah Code Ann. Section 41-1a-102.

A. The division shall maintain a list of all vehicles currently eligible for classification as special interest vehicles.

1. A request for the classification of a vehicle as a special interest vehicle shall be approved if the vehicle is on the list.

2. If a vehicle not on the list qualifies for classification as a special interest vehicle pursuant to Section 41-1a-102, the division director shall add that vehicle to the list.

R873-22M-32. Rescinding Dismantling Permit Pursuant to Utah Code Ann. Section 41-1a-1010.

A. For purposes of Section 41-1a-1010, a Utah certificate of title does not include a salvage certificate, an Affidavit of Facts, or Tax Commission form TC-839, Certificate of Sale.

B. An applicant with a vehicle eligible for retitling under Section 41-1a-1010 shall receive a title consistent with the title of the vehicle at the time of application for a permit to dismantle.

R873-22M-33. Private Institution of Higher Education Pursuant to Utah Code Ann. Section 41-1a-408.

A. "Private institution of higher education" means a private institution that is accredited pursuant to Section 41-1a-408 and that issues a standard collegiate degree.

B. "Standard collegiate degree" means an associate, bachelor's, master's, or doctorate degree.

R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

A. The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.

B. Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:

1. Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

2. Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, "69" formats are prohibited unless used in a combination with the vehicle make, for example, "69 CHEV."

3. Combinations of letters, words, or numbers that connote

the substance, paraphernalia, sale, user, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant.

4. Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

C. If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.

D. The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:

1. translation from foreign languages;

2. an upside down or reverse reading of the requested format;

3. the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.

E. The director shall consider the applicant's declared definition of the format, if provided.

F. If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1-4A.

G. If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under B., the division shall again review the format.

H. If the division determines pursuant to F. that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in B. through E.

I. A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

J. If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within one year of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

R873-22M-36. Access to Protected Motor Vehicle Records Pursuant to Utah Code Ann. Section 41-1a-116.

A. "Advisory notice" means:

1. notices from vehicle manufacturers, the manufacturers' authorized representative, or government entities regarding information that is pertinent to the safety of vehicle owners or occupants; and

2. statutory notices required by Sections 38-2-4 and 27-17-603 or by other state or federal law directing a party to mail a notice to a vehicle owner at the owner's last known address as shown on Motor Vehicle Division records.

B. Telephone accounts.

1. Public records may be released by phone to any person who has established a telephone account pursuant to Section 41-1a-116 (7).

2. A person who is authorized to access protected records must submit a written request in person, by mail, or by facsimile to the Motor Vehicle Division. Protected records may be released by phone to a person who has established a telephone account only under the following conditions:

a) The applicant for a telephone account must complete an application form prescribed by the Commission annually.

b) Protected records may be released by phone to private investigators, tow truck operators or vehicle mechanics who are licensed to conduct business in that capacity by the appropriate state or local authority.

c) Towers and mechanics are entitled to access protected records only for the purpose of making statutory notification of the owner at the last known address according to motor vehicle records. Prior to release of the information, the tower or mechanic must deliver or fax to the Motor Vehicle Division a copy of the work order or other evidence of a possessory lien on the vehicle. The lien claim must arise under a statute that requires notification of the vehicle owner at the owner's last known address according to state motor vehicle records.

C. An authorized agent of an individual allowed access to protected records under Section 41-1a-116 must evidence a signed statement indicating that he is acting as an authorized representative and the extent of that representative authority.

D. Utah law governs only the release of Utah motor vehicle records. The Motor Vehicle Division shall not release out-of-state motor vehicle registration information.

R873-22M-37. Standard Issue License Plates Pursuant to Utah Code Ann. Sections 41-1a-402 and 41-1a-1211.

A. In the absence of a designation of one of the standard issue license plates at the time of the license plate transaction, the license plate provided shall be the statehood centennial license plate.

B. Any exchange of one type of standard issue license plate for the other type of standard issue license plate shall be subject to the plate replacement fee provided in Section 41-1a-1211.

R873-22M-38. Procedure for Reinstatement of Registration Revoked for Lack of Owner's or Operator's Security Pursuant to Utah Code Ann. Section 41-1a-1220.

A. An application for reinstatement or renewal of registration of a motor vehicle after a revocation of the vehicle's registration under Section 41-1a-110(1)(f) shall be accompanied by form SR-22, issued by the applicant's insurer, and described in Section 41-12a-402.

KEY: taxation, motor vehicles, aircraft, license plates
August 11, 1998
Notice of Continuation May 8, 1997

2-1-7
2-1-7.5
2-1-7.6
2-1-7.7
41-1-1
41-1-115
41-1-127
41-1-131(a)
41-1-134
41-1-135
41-1-139
41-1-19
41-1-3
41-1-36.5
41-1-43
41-1-44
41-1-49
41-1-52
41-1-57
41-1-62
41-1-90
41-1a-102
41-1a-104
41-1a-108
41-1a-116
41-1a-211
41-1a-215
41-1a-214
41-1a-302
41-1a-401
41-1a-402
41-1a-408
41-1a-409
41-1a-411
41-1a-413
41-1a-414
41-1a-416
41-1a-522
41-1a-701
41-1a-1001
41-1a-1002
41-1a-1004
41-1a-1009
through
41-1a-1011
41-1a-1101
41-1a-1209
41-1a-1211
41-1a-1216
41-1a-1220
41-6-44
59-12-104
59-2-103
59-4-1

R877. Tax Commission, Motor Vehicle Enforcement.
R877-23V. Motor Vehicle Enforcement.
R877-23V-3. Salesperson Licensed For One Dealer Only Pursuant to Utah Code Ann. Section 41-3-202.

A. The holder of a dealer's license may not hold an additional license to engage in the activities of a salesperson for another dealer.

B. The requirement that a salesperson may be licensed with only one dealer at a time does not preclude dealership owners from being no-fee salespersons for their own dealerships.

R877-23V-4. License Holder Prohibitions Pursuant to Utah Code Ann. Section 41-3-210.

A. A person holding a dealer's license may not:

1. employ a person who has not obtained a salesperson's license to act as a salesperson for that dealer;

2. enter into a contract, agreement, or owner-finder plan with a person who has not obtained a salesperson's license to act as a salesperson for that dealer; or

3. encourage or conspire with any person who has not obtained a salesperson's license to:

a) act as a salesperson or agent;

b) solicit for prospective purchasers; or

c) negotiate or assist in any way in the negotiation of a sale of a motor vehicle for a salary, commission, or compensation of any kind.

R877-23V-5. Temporary Motor Vehicle Registration Permits and Extension Permits Issued by Dealers Pursuant to Utah Code Ann. Section 41-3-302.

A. Every dealer desiring to issue temporary permits for the operation of motor vehicles shall make application to the Motor Vehicle Enforcement Division. If the privilege is extended, the dealer will receive a series of permits, consecutively numbered. The numbers shall be recorded by the division and charged to the dealer.

B. If a vehicle purchaser requests a temporary permit, the dealer shall issue no more than one temporary registration permit, in numerical sequence, for each motor vehicle sold.

C. The expiration date on the original permit shall be legible from a distance of 30 feet.

D. The permit shall be displayed at the rear of the motor vehicle, in a place where the printed information on the permit and the expiration date may be easily seen.

E. Temporary permits must not be placed in rear windows or permit holders with less than seventy percent light transparency.

1. If a permit holder is used, it must not cover any of the printed information on the permit, including the expiration date.

2. If a license plate frame is used in conjunction with a permit holder, it must not cover any printed information or expiration date on the permit.

3. Temporary permits must be protected from exposure to the weather and conditions that would render them illegible.

F. If a temporary permit is filled out incorrectly, the sale of the vehicle is rescinded, or for some other reason the permit is unusable, the dealer must return the permit to the Motor Vehicle Enforcement Division, together with the stub, and it will not be considered issued. If the permit is placed on a vehicle and the sale has not been rescinded, the permit will be considered issued and the dealer is liable for the registration fee for the vehicle together with any applicable penalties.

G. A dealer's temporary permits may be audited at any time and the dealer required to pay for all outstanding permits. The registration fee charged will be for a passenger car unless the dealer is licensed to sell only motorcycles or small trailers.

1. If the dealer's records indicate that the permit was issued for a vehicle other than that for which the dealer was billed, the dealer must submit the proper fee and penalty.

2. If the records disclose that the permit was cleared properly, the dealer must furnish the license number of the vehicle for which the permit was issued and the date of issue.

3. A dealer shall resolve any outstanding permit billings by payment of fees and penalties or by reconciling the permits before any additional permits will be issued to the dealer. This action will not be construed to be a cancellation of a dealer's privilege of issuing temporary permits, but merely a function of the division's routine audit and billing procedure.

H. The dealer shall keep a written record in numerical sequence of every temporary registration permit issued. This record shall include all of the following information:

1. the name and address of the person or firm to whom the permit is issued;

2. a description of the motor vehicle for which it was issued, including year, make, model, and identification number;

3. date of issue;

4. license number;

5. in the case of a commercial vehicle, the gross laden weight for which it was issued.

I. In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:

1. The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.

2. If the extension permit is approved, the division shall issue the dealer an approval number. This number must be recorded by the dealer in its temporary permit record and on the permit and stub in the space provided for the license number. The space provided on the permit and stub for the dealer name must be completed with the words "State Tax Commission" and the dealer's license number. The remainder of the permit and stub will be completed as usual.

3. The dealer must return the permit stub to the division within 30 days from the date it is issued.

4. Extension permits will not be granted for vehicles for which a nonresident affidavit was submitted in lieu of sales tax.

5. A dealer may not issue an extension permit if it is determined that the dealer has been granted extensions for more than 2% of the permits issued to the dealership during the past three months. This percentage is calculated by dividing the number of extensions granted the dealer during the past three months by the permits issued by the dealer during the past three months.

J. All extension permits issued by dealers under this rule are considered issued by the division.

K. When a motor vehicle is sold to a nonresident for

registration in another state, the stub portion of the temporary permit shall be filed with the division within ten days from the date of issue, accompanied by a nonresident affidavit and the required fee. The sale must be reported in the dealer's monthly report of sale required by Section 41-3-301(2)(b). If the permit stub, nonresident affidavit, and the required fee are not postmarked or received by the division within 30 days, a penalty equal to the required fee shall be collected pursuant to Section 41-3-302.

L. The temporary registration card, attached to the temporary permit, must be detached and given to the customer at the time the temporary permit is issued. This temporary registration card must be kept in the vehicle while the temporary permit is displayed.

R877-23V-6. Issuance of In-Transit Permits Pursuant to Utah Code Ann. Section 41-3-305.

A. Transported semitractors are piggy-backed when all of the semitractors being transported are touching the ground.

B. In-transit permits may not be issued for loaded motor vehicles over 12,000 pounds gross laden weight.

C. Each piggy-backed vehicle must have a separate in-transit permit or be properly registered for operation in Utah.

D. A semitractor hauling unlicensed trailers must obtain an in-transit permit for any trailer in contact with the ground.

R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.

A. Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210.

1. Accuracy. Any advertised statements and offers about a vehicle as to year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so forth, shall be clearly set forth and based upon facts.

2. Bait. Bait advertising and selling practices may not be used. A vehicle advertised at a specific price shall be in the possession of the advertiser at the address given. It shall be willingly shown, demonstrated and sold, or, in the case of a new vehicle floor model, orders shall be taken for future delivery of the identical model at the advertised price and terms. If sold, the advertiser shall, upon request of any prospective purchaser, peace officer, or employee of the division, show sales records of the advertised vehicle.

3. Price. When the price of a vehicle is quoted, the vehicle shall be clearly identified as to make, year, model and if new or used. In addition, the stated price must include all charges that the customer must pay for the vehicle, including freight or destination charges, dealer preparation, dealer handling, additional dealer profit, document fees, and undercoating or rustproofing.

a) The advertised price need not include sales tax, or titling and registration fees required by the state or a county.

b) In addition to other advertisements, this pertains to price statements such as "$..... Buys".

c) When "list", "sticker", or words of similar import are used in an advertisement, they may refer only to the manufacturer's suggested retail price. If a supplementary price sticker is used, the advertised price must include all items listed on the supplementary sticker.

d) If the customer requests and receives a temporary permit, the temporary permit fee need not be included in the advertised price. Documentation fees are not required by the state or counties.

4. Savings and Discount Claims. Because the intrinsic value of a used vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This includes statements such as, "Was priced at $....., now priced at $.....

a) The word "wholesale" may not be used in retail automobile advertising.

b) When an automotive advertisement contains an offer of a discount on a new vehicle, the amount of the discount must be stated by reference to the manufacturer's suggested retail price of the vehicle.

5. Down Payments. The amount of the down payment may not be stated in a manner that suggests that it is the selling price of the vehicle. If an advertisement states "You can buy with no money down", or terms of similar import, the customer must be able to leave the dealership with the vehicle without making any outlay of money.

6. Trade-in Allowance. Statements representing that no other dealer grants greater allowances for trade-ins may not be used. A specific trade-in amount or range of trade-in amounts may not be used in advertising.

7. Finance. The phrases, "no finance charge", "no carrying charge", or similar expressions may not be used when there is a charge for placing the transaction on a time payment basis. Statements representing or implying that no prospective credit purchaser will be rejected because of inability to qualify for credit may not be used.

8. Unpaid Balance and Repossessions. The term "repossessed" may be used only to describe vehicles that have actually been repossessed from a purchaser. Advertisers offering repossessed vehicles for sale may be required to offer proof of those repossessions. The unpaid balance shall be the full selling price unless otherwise stated.

9. Current Used. When a used vehicle, as defined by Section 41-3-102(20), of a current series is advertised, the first line of the advertisement must contain the word "used" or the text must clearly indicate that the vehicle offered is used.

10. Demonstrators, Executives' and Officials' Cars.

a) "Demonstrator" means a vehicle that has never been sold or leased to a member of the public.

b) Demonstrator vehicles include vehicles used by new vehicle dealers or their personnel for demonstrating performance ability but not vehicles purchased or leased by dealers or their personnel and used as their personal vehicles.

c) A demonstrator vehicle may be advertised for sale only by a dealer franchised for the sale of that make of new vehicle.

d) An executive's or official's vehicle shall have been used exclusively by an executive of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These vehicles may not have been sold or leased to a member of the public prior to the appearance of the advertisement.

e) Demonstrator's, executive's and official's vehicles shall be clearly and prominently advertised as such. Advertisements shall include the year, make, and model of the vehicle offered

for sale.

11. Taxi-cabs, Police, Sheriff, and Highway Patrol Vehicles. Taxi-cabs, police, sheriff, and highway patrol vehicles shall be so identified. These vehicles may not be described by an ambiguous term such as "commercial".

12. Mileage Statements. When an advertisement quotes the number of miles or a range of miles a vehicle has been driven, the licensee must have written evidence that the vehicle has not been operated in excess of the advertised mileage.

a) The evidence required by this section shall be the properly completed odometer statement required by Section 41-1a-902.

b) If a licensee chooses to advertise specific mileage or a range of miles a vehicle has been driven, the licensee shall upon request of any prospective purchaser, peace officer, or employee of the division produce all documents in its possession pertaining to that vehicle so that the mileage can be readily verified.

13. Underselling Claims. Unsupported underselling claims may not be used. Underselling claims include the following: "our prices are guaranteed lower than elsewhere", "money refunded if you can duplicate our values", "we guarantee to sell for less", "we sell for less", "we purchase vehicles for less so we can sell them for less", "highest trade-in allowance", "we give $300 more in trade than any other dealers". Evidence of supported underselling claims must be contained in the advertisement.

14. Would You Take $..... Use of cards, circulars, or other advertising containing such offers as "would you take $....., if I could get you $..... for your car", may not be used.

15. Free. "Free" may be used in advertising only when the advertiser is offering an unconditional gift. If receipt of the merchandise or service is conditional on a purchase the following conditions must be satisfied:

a) The normal price of the merchandise or service to be purchased may not have been increased nor its quantity reduced;

b) The advertiser must disclose this condition clearly and conspicuously together with the offer and not by placing an asterisk or symbol next to the word "free" and then referring to the condition in a footnote; and

c) The offer must be temporary. For purposes of this subsection, "temporary" means that the offer is made for no more than 30 days during any 12-month period.

16. Driving Trial. A free driving trial means that the purchaser may drive the vehicle during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, signed agreements, or other considerations deposited and a return of any vehicle traded in. The exact terms and conditions of the free driving trial shall be set forth in writing and a copy given to the purchaser at the time of the sale.

17. Guaranteed. When words such as "guarantee", "warranty", or other terms implying protection are used in advertising, an explanation of the time and coverage of the guarantee or warranty shall be given in clear and concise language. The purchaser shall be provided with a written document stating the specific terms and coverage.

18. Name Your Own Deal. Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own vehicle", and phrases of similar import may not be used.

19. Disclosure of Material Facts. Disclosures of material facts that are contained in advertisements and that involve types of vehicles and transactions shall be made in a clear and conspicuous manner.

a) Factors to be taken into consideration include advertisement layout, headlines, illustrations, type size, contrast, crawl speed and editing.

b) Fine print, and mouse print are not acceptable methods of disclosing material facts.

c) The disclosure must be made in a typeface and point size comparable to the typeface and point size of the text used throughout the body of the advertisement.

d) An asterisk may be used to give additional information about a word or term, however, asterisks or other reference symbols may not be used as a means of contradicting or substantially changing the meaning of any advertising statements.

20. Lease. When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease.

a) The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the vehicle.

b) Statements that do not use the term "lease" do not constitute adequate disclosure of a lease.

c) Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of money is required to lease the vehicle.

d) Lease terms that are not available to the general public may not be included in advertisements directed at the general public.

e) Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

21. Television Disclosures. A disclosure appearing in television advertisements must clearly and conspicuously feature all necessary information in a manner that can be read and understood if type is used, or that can be heard and understood if audio is used. Fine print and mouse print do not constitute clear and conspicuous disclosure.

22. Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long as the dealer is willing to show the factory invoice to the prospective buyer. The term "cost" may not be used.

23. Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is offering the rebate.

24. Buy-down Interest Rates. No buy-down interest rate may be advertised unless the dealer discloses the amount of dealer contribution and states that the contribution by the dealership may increase the negotiated price of the vehicle.

25. Special Status of Dealership. An automotive advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

26. Price Equaling. An advertisement that expresses a policy of matching or bettering competitor's prices shall fully disclose any conditions that apply and specify the evidence a

consumer must present to take advantage of the offer. The evidence requirement may not place an unreasonable burden on the consumer by, for example requiring the consumer to produce a signed contract from another dealer or to find a vehicle with the identical features.

27. Van Conversion Advertisements. A dealer may advertise a modified vehicle using the conversion firm's name and may refer to the chassis manufacturer in a less prominent manner, but may not advertise a modified vehicle solely by a chassis manufacturer's name unless enfranchised to sell that make of vehicle.

28. Auction. "Auction" or "auction special" and other terms of similar import may be used only in connection with vehicles offered or sold at a bona fide auction.

29. Layout and Type Size. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio or television advertisements may not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered at featured prices.

a) When an advertisement contains a picture of a vehicle along with a quoted price, the vehicle pictured must be the exact model with identical options and accessories as the vehicle advertised.

b) No advertised offer, expression, or display of price, terms, down payment, trade-in allowances, cash difference, savings, or other material terms may be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

c) Qualifying terms and phrases shall be clearly, conspicuously, and accurately set forth as follows:

(1) in bold print and in type of a size that is capable of being read without unreasonable extra effort;

(2) in terms that are understandable to the buying public; and

(3) in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

R877-23V-8. Signs and Identification Pursuant to Utah Code Ann. Section 41-3-105.

A. Every dealer, dismantler, manufacturer, remanufacturer, transporter, crusher, and body shop must post a sign at its principal place of business.

B. The sign required under A. shall:

1. plainly display in a permanent manner the name under which the business is licensed;

2. be not less than 24 square feet in size, unless required otherwise, in writing, by a government entity;

3. be painted on the building, attached to the building with nails or bolts, or affixed to posts that have been securely anchored in the ground.

C. A similar sign must be conspicuously posted at each additional place of business and must show, in addition, the address of the principal place of business. All signs must remain posted at each place of business and on the office. If the office is not located at the site on which the motor vehicles are displayed or offered for sale or exchange, the bonded dealer number, dismantler number, or manufacturer number must also be conspicuously displayed either on the sign or on the building.

D. If the additional place of business is an auto show or similar business that will conduct business for ten days or less, the sign need only show the licensee's name as licensed by the division and be of a size that reasonably identifies the licensee.

E. Every dismantler, body shop, crusher, and dealer engaged in the business of dismantling motor vehicles for the sale of parts or salvage shall identify any vehicles or equipment used by the dismantler, body shop, crusher, or dealer for transporting salvage or parts on the highways. This identification shall include the name, address, and dismantler, body shop, crusher, or dealer number of the licensee, and shall be conspicuously displayed on both sides of the vehicle or equipment in letters and numerals not less than two inches in height.

F. No place of business may be operated under a name other than that by which the licensee is licensed by the division. No sign may be posted at a place of business that shows a business name other than the one licensed by the division or gives the impression that the business is other than the one licensed by the division. However, a sign containing a variation of the licensee's name, if a variation of the licensee's name is required by a manufacturer in writing, may be posted as long as the sign containing the licensed name is more prominent.

G. Documents submitted by a licensee to a government entity shall be identified only by the name under which the licensee is licensed by the division. All documents used by the licensee to promote or transact a sale or lease of a vehicle shall identify that licensee only by the name under which the licensee is licensed with the division.

R877-23V-10. Uniform Vehicle Identification Numbering System for Licensed Manufacturers Pursuant to Utah Code Ann. Section 41-3-202.

A. Except as provided in subsection (B), all manufacturers of motor vehicles licensed under Section 41-3-202 shall comply with the National Highway Traffic and Safety Administration's Standard No. 115, 49 C.F.R. Section 571.115 (1992), regarding 17-character vehicle identification number (VIN) requirements.

B. Manufacturers involved only in the second stage of a multi-stage vehicle are not required to comply with subsection (A) if the manufacturer of the first stage has complied with subsection (A).

R877-23V-11. License Information Update Pursuant to Utah Code Ann. Section 41-3-201.

A. Every person licensed under Section 41-3-202 shall notify the Motor Vehicle Enforcement Division (division) immediately of any change in ownership, address, or circumstance relating to its fitness to be licensed.

B. The division may request the licensee to review information contained in the division's files and notify the division of any corrections that must be made.

R877-23V-12. Documents Required Prior to Issue of a License Pursuant to Utah Code Ann. Section 41-3-105.

A. The following items must be properly completed and presented to the Motor Vehicle Enforcement Division (division) before a license is issued.

1. New motor vehicle dealer or new motorcycle and small trailer dealer license:

a) application for license;

b) dealer bond in the amount prescribed by Section 41-3-205;

c) evidence that a Utah sales tax license has been issued to the dealership;

d) franchise verification from the manufacturer of each make of new motor vehicle to be offered for sale;

e) picture of the dealership, clearly showing the office, display space, and required sign;

f) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

g) the fee required by Section 41-3-601;

h) evidence that the place of business has been inspected by an authorized division employee or agent;

i. fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

2. Used motor vehicle dealer or used motorcycle and small trailer dealer license:

a) application for license;

b) dealer bond in the amount prescribed by Section 41-3-205;

c) evidence that a Utah sales tax license has been issued to the dealership;

d) picture of the dealership, clearly showing the office, display space, and required sign;

e) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

f) the fee required by law;

g) evidence that the place of business has been inspected by an authorized division employee or agent;

h) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

3. Manufacturer or remanufacturer license:

a) application for license;

b) evidence that the applicant has complied with the National Highway Traffic and Safety Administration's Motor Vehicle Safety Standard No. 115, regarding 17 character vehicle identification number (VIN) requirements;

c) picture of the principal place of business;

d) the fee required by Section 41-3-601;

e) evidence that a Utah sales tax license has been issued to the manufacturer or remanufacturer;

f) evidence that the place of business has been inspected by an authorized division employee or agent.

4. Transporter license:

a) application for license;

b) picture of the principal place of business;

c) the fee required by Section 41-3-601;

d) evidence that a Utah sales tax license has been issued to the transporter;

e) evidence that the place of business has been inspected by an authorized division employee or agent.

5. Dismantler license:

a) application for license;

b) evidence that a Utah sales tax license has been issued for the dismantler;

c) picture of the principal place of business, clearly showing the office, sign, and display space;

d) the fee required by Section 41-3-601;

e) evidence that the place of business has been inspected by an authorized division employee or agent.

6. Crusher license:

a) application for license;

b) crusher bond as prescribed in Section 41-3-205;

c) picture of the principal place of business, clearly showing the office;

d) the fee required by Section 41-3-601;

e) evidence that a Utah sales tax license has been issued for the crusher;

f) evidence that the place of business has been inspected by an authorized division employee or agent.

7. Salesperson license:

a) application for license;

b) picture of the applicant;

c) fingerprints of the applicant and the fees and waiver required by the Department of Public Safety for the processing of fingerprints;

d) the fee required by Section 41-3-601.

8. Distributor, factory branch, distributor branch, or representative license:

a) application for license;

b) the fee required by Section 41-3-601.

9. Body shop license:

a) application for license;

b) body shop bond as prescribed in Section 41-3-205;

c) picture of the principal place of business, clearly showing the office, sign, and display space;

d) the fee required by Section 41-3-601;

e) evidence that a Utah sales tax license has been issued for the body shop;

f) evidence that the place of business has been inspected by an authorized division employee or agent.

10. New applicants may also be required to attend an orientation class on motor vehicle laws and motor vehicle business laws before their license is issued.

R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302.

A. A dealer issuing temporary permits under Sections 41-3-301 or 41-3-302 shall segregate and separately identify the fees required by Title 41, Chapter 1a, as state-mandated fees.

B. Only fees required by Title 41, Chapter 1a, may be identified as state-mandated fees.

C. A dealer that fails to segregate and separately identify state-mandated fees pursuant to A. is in violation of Title 41, Chapter 3.

D. If a dealer charges the purchaser/consumer/lessee of a motor vehicle a fee for the handling and processing of any state-mandated fees (such fees are commonly referred to as "dealer documentary service fees"), then the dealer, in addition to the requirements set forth in A., B., C. above, must prominently

display a sign on the dealer premises in such location as to readily discernable by all purchasers, consumers, or lessees. The sign shall read as follows:

The (dealer documentary service fee) ( )as set forth in your contract represents costs and profit to the dealer for preparing and processing documents and other services related to the sale or lease of your vehicle. These fees are not set or state mandated by state statute or rule.

The blank in the preceding paragraph may be wording selected by the dealer to describe the fee charged for document preparation and processing and other services, but must be, in all cases, the actual wording used in the dealer's contract of sale or lease agreement.

R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507.

A. A lost or stolen dealer, dismantler, manufacturer, remanufacturer, or transporter plate may be replaced only after it has expired.

B. The replaced special plate shall be included in the calculation of special plates a dealer may be issued under Section 41-3-503.

KEY: taxation, motor vehicles

August 11, 1998	**41-3-23**
Notice of Continuation May 22, 1997	**41-3-105**
	41-3-201
	41-3-202
	41-3-210
	41-3-301
	41-3-302
	41-3-305
	41-3-503
	41-3-505
	41-3-506
	41-3-507

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;

b) transportation costs;

c) installation charges and construction costs; and

d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that

is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;

(b) actual sales of like mineral by other taxpayers; or

(c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue,

calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;

2. the address of the property; and

3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.

A. Definitions:

1. "Utah fair market value" means the fair market value of

that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-

302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

A. "State Registered Appraiser," State Certified General Appraiser, and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practicums.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).

2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:

a) Course A - Assessment Practice in Utah;

b) Course B - Fundamentals of Real Property Appraisal (IAAO);

c) Course C - Mass Appraisal of Land;

d) Course D - Building Analysis and Valuation;

e) Course E - Income Approach to Valuation (IAAO);

f) Course G - Development and Use of Personal Property Schedules; and

g) Course H - Appraisal of Public Utilities and Railroads (WSATA).

C. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst. The designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors. An assessor, county employee, or state employee must hold the appropriate designation listed below to gain the authority to value property for ad valorem taxation purposes.

1. Ad Valorem Residential Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and a comprehensive residential field practicum, and attainment of state registered or certified appraiser status.

b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

2. Ad Valorem General Real Property Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and E and a comprehensive field practicum including both residential and commercial properties, and attainment of state registered or certified appraiser status.

b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

3. Ad Valorem Personal Property Auditor/Appraiser:

a) Requires the successful completion of Courses A, B, and G, and a comprehensive auditing practicum.

b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

4. Ad Valorem Centrally Assessed Valuation Analyst:

a) Requires the successful completion of Courses A, B, E, and H, and a comprehensive valuation practicum, and attainment of state registered or certified appraiser status.

b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

D. Candidates must pass the final examination for each course with a grade of 70 points or more to be successful.

E. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

F. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. A trainer, assigned by the Tax Commission, will oversee and administer the practicum.

G. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

H. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

I. Upon termination of employment from any Utah assessment jurisdiction, or if the individual is no longer working primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 or more.

J. All appraisal work performed by Tax Commission designated appraisers shall meet the current requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Foundation.

K. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only appraisers with the State Certified General Appraiser license may appraise nonresidential properties.

2. All appraisal work shall meet the current requirements of USPAP.

L. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific registration or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of D.3.a) or D.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the

Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. New growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. The following definitions and formulas shall be used in determining the certified tax rate:

1. Current year adjusted taxable value equals the taxable value for the current year adjusted for redevelopment; then

a) adjusted for estimated value losses due to appeals, using an average percentage loss for the past three years; then

b) adjusted for estimated collection losses.

2. The certified tax rate shall be computed as follows:

a) Last year's taxes collected, excluding redemptions, penalties, interest, roll-back taxes, and other miscellaneous collections.

b) Divided by the sum of the current year adjusted taxable value less adjusted new growth.

3. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

4. Exceptions to L.3. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

M. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

N. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that

entity existed on the first day of that calendar year.

R884-24P-26. Requirements of the Farmland Assessment Act of 1969 Pursuant to Utah Code Ann. Sections 59-2-501 through 59-2-515.

A. A parcel of land less than five acres in size may qualify for assessment under the provisions of the Farmland Assessment Act (FAA) if it:

1. has ownership identical to and is used in conjunction with a qualifying parcel of five or more acres;

2. is in close proximity to the primary farm;

3. has a direct relationship to the total agricultural enterprise;

4. makes a significant contribution to the enterprise's total production; and

5. meets all other requirements set forth in Section 59-2-503.

B. FAA application forms shall provide for reporting of the current serial number, legal description, ownership, and all other pertinent information of the subject properties.

1. The assessor shall maintain all FAA records in the assessor's office. These records shall include the original year of application and clearly indicate the number of years these properties have been assessed and taxed under the FAA.

2. All parcels assessed and taxed under the provisions of the FAA shall be so designated on the assessment roll.

3. All FAA applications, including those resulting from changes in ownership, legal description, additions, or deletions, must be recorded.

C. For FAA purposes, a property may be considered contiguous even though it is severed by a public highway, unimproved road, fence, canal, or waterway.

D. Upon withdrawal or change in use of a parcel assessed under the provisions of the FAA, the assessor shall immediately calculate the amount of the roll-back tax due and the county shall bill the roll-back tax due.

1. The amount of the lien shall be shown on the recorded roll-back statement.

2. If the roll-back tax is not paid to the county treasurer within 30 days after billing, the county treasurer shall proceed to collect the amount due.

3. If, after a period of being exempt, the property is used for a purpose that does not qualify for assessment under the FAA, the roll-back provisions of FAA shall apply to the time the property was under the provisions of the FAA, up to a maximum of five years, less the number of years that the property was exempt.

E. Land that becomes ineligible for farmland assessment solely as a result of amendments to Sections 59-2-501 through 59-2-515 is not subject to the roll-back tax if the owner of that land notifies the county assessor of the land's ineligibility for farmland assessment on or before January 1, 1994.

F. Applications for assessment and taxation under the FAA may be made only by the owner of farm property. A lessee or purchaser of any parcel may arrange with the owner to farm such land, but the lessee or purchaser may not make application for farmland assessment in the lessee's or purchaser's name.

G. A leased parcel may be assessed under the FAA if it meets all of the eligibility requirements set forth in Section 59-2-503.

H. All applications for assessment under the provisions of the FAA shall be accompanied by documentation verifying the agricultural production of the property for the two years immediately preceding the year of application. The county assessor or the commission may request any additional information needed to determine eligibility under Section 59-2-503.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Section 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Nonparametric" means data samples that are not normally distributed.

4. "Parametric" means data samples that are normally distributed.

5. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-16-13.

B. The Tax Commission adopts the following standards of assessment performance regarding assessment level and uniformity:

1. Adjustment shall be ordered for a property class or subclass if the measure of central tendency is not within 10 percent of the legal level of assessment or the 95 percent confidence interval of the measure of central tendency does not contain the legal level of assessment.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The adjustment shall be calculated by dividing the legal level of assessment by the measure of central tendency when uniformity meets the standards in B.2., or by the 95 percent confidence interval limit nearest the legal level of assessment when the standards in B.2. are not met.

2. Corrective action for the property being appraised under the cyclical appraisal plan for a given year shall be ordered if the measure of dispersion is outside the following limits for the coefficient of dispersion (COD), or for the coefficient of variation (COV) when data are normally distributed:

a) In urban counties, the limit for the COD is 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property.

b) In rural counties, the limit for the COD is 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

c) The limit for the COV is 1.25 times the COD.

d) Corrective action may contain language requiring a county to create or follow its cyclical appraisal plan.

e) If the sample size does not meet the requirements of B.3., or if there is reason to question the reliability of statistical data achieved under B.3., an alternate performance evaluation shall be conducted, which may result in corrective action. The

alternate performance evaluation shall include review and analysis of the following:

(1) the county's procedures for use and collection of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(2) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(3) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties;

(4) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

3. To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class or subclass, the acceptable sample size shall consist of 10 or more ratios.

a) To meet the minimum sample size, the study period may be extended.

b) A smaller sample size may be used if that sample size is at least 10 percent of the class or subclass population.

c) All input to the sample used to measure performance shall be completed by September first of each study cycle.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. Leasehold improvements under the control of the lessee shall be taxed as personal property of the lessee.

B. If not taxed as personal property of the lessee, the value of leasehold improvements shall be included in the value of the real property.

R884-24P-33. 1998 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the manufacturer's suggested retail price or the actual cost of the property when purchased new. For property purchased used the cost new may be estimated by the taxing authority.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, and Manufactured Housing Section of the Marshall Valuation Service, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. The assessor and the Commission may rely on other

publications listing costs new or market values when valuing motor vehicles not found in the source guide recommended by the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:

(1) barricades/warning signs;
(2) library materials;
(3) patterns, jigs and dies;
(4) pots, pans, and utensils;
(5) canned computer software;
(6) hotel linen;
(7) wood and pallets; and
(8) video tapes.

b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) Video tapes are valued at $15.00 per tape for the first year and $3.00 per tape thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
97	70%
96	40%
95 and prior	10%

2. Class 2 - Computer Dependent Machinery.

a) Machinery shall be classified as computer dependent machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice(s) break out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
97	87%
96	71%
95	61%
94	54%
93	46%
92	37%
91	27%
90 and prior	17%

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

(1) office machines;
(2) alarm systems;
(3) shopping carts;
(4) ATM machines;
(5) small equipment rentals;
(6) property subject to a rent-to-own agreement;
(7) telephone equipment and systems;
(8) music systems;
(9) vending machines; and
(10) video game machines.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
97	83%
96	67%
95	52%
94	36%
93 and prior	18%

4. Class 4 - Service Equipment. Class 4 property is used by service industries and is subject to a high degree of functional obsolescence.

a) Examples of property in this class include:

(1) service station equipment;
(2) car wash equipment;
(3) bulk and holding tanks;
(4) tire and wheel service equipment;
(5) dry cleaning machines;
(6) mechanical and electrical signs;
(7) clothes washers and dryers;
(8) tanks; and
(9) pumps.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 4

Year of Acquisition	Percent Good of Acquisition Cost
97	88%
96	78%
95	69%
94	59%
93	49%
92	37%
91	25%
90 and prior	13%

5. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

(1) furniture;

(2) bars and sinks:

(3) booths, tables and chairs;

(4) beauty and barber shop fixtures;

(5) cabinets and shelves;

(6) displays, cases and racks;

(7) office furniture;

(8) theater seats; and

(9) water slides.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
97	89%
96	81%
95	72%
94	64%
93	55%
92	45%
91	34%
90	23%
89 and prior	12%

6. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

(1) heavy duty trucks; and

(2) medium duty trucks.

b) Taxable value is calculated by applying the percent good factor against the actual cost of the property when purchased new or 75 percent of the manufacturer's suggested retail price. The taxable value for vehicles purchased used will be determined by applying the percent good factor to the value determined by the assessing authority. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Trucks weighing two tons or more have a minimum value of $1,750 and a minimum tax of $26.25.

TABLE 6

Year of Model	Percent Good of Cost New
98	90%
97	71%
96	66%
95	61%
94	56%
93	51%
92	46%
91	41%
90	36%
89	31%
88	26%
87	21%
86	16%
85 and prior	10%

7. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

a) Examples of property in this class include:

(1) medical and dental equipment and instruments;

(2) exam tables and chairs;

(3) high-tech hospital equipment;

(4) microscopes; and

(5) optical equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
97	91%
96	84%
95	78%
94	71%
93	64%
92	56%
91	47%
90	38%
89	29%
88	21%
87 and prior	11%

8. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

(1) manufacturing machinery;

(2) amusement rides;

(3) bakery equipment;

(4) distillery equipment;

(5) refrigeration equipment;

(6) nonpetroleum drill rigs;

(7) machine shop equipment;

(8) incinerators;

(9) leased farm equipment;

(10) mining equipment;

(11) ski lift machinery;

(12) printing equipment; and

(13) bottling or cannery equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
97	91%
96	84%

95	78%
94	71%
93	64%
92	56%
91	47%
90	38%
89	29%
88	21%
87 and prior	11%

9. Class 9 - Off-Highway Recreational Vehicles.

a) Examples of property in this class include:

(1) dirt and trail motorcycles;

(2) all terrain vehicles;

(3) golf carts; and

(4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new or suggested list price from the January-April NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Off-Highway Recreational Vehicles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 9

Year of Model	Percent Good of Cost New
98	90%
97	58%
96	55%
95	52%
94	49%
93	46%
92	43%
91	40%
90	37%
89	34%
88	31%
87	28%
86	25%
85 and prior	22%

10. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
97	93%
96	87%
95	83%
94	78%
93	73%
92	67%
91	60%
90	53%
89	47%
88	41%
87	34%
86	26%
85	18%
84 and prior	10%

11. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

(1) street motorcycles;

(2) scooters; and

(3) mopeds.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the suggested list price from the January-April edition of the NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Street motorcycles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 11

Year of Model	Percent Good of Cost New
98	90%
97	71%
96	68%
95	66%
94	63%
93	60%
92	57%
91	55%
90	52%
89	49%
88	46%
87	44%
86	41%
85	38%
84	35%
83	33%
82 and prior	30%

12. Class 12 - Computer Hardware.

a) Examples of property in this class include:

(1) data processing equipment;

(2) personal computers;

(3) main frame computers;

(4) computer equipment peripherals; and

(5) cad/cam systems.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Model	Percent Good of Acquisition Cost
97	85%
96	57%
95	36%
94	23%
93	14%
92 and prior	9%

13. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

(1) construction equipment;

(2) excavation equipment;

(3) loaders;

(4) batch plants;

(5) snow cats; and

(6) power sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) 1998 model equipment purchased in 1997 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
97	66%
96	62%
95	59%
94	55%
93	52%
92	48%
91	45%
90	41%
89	38%
88	35%
87	31%
86	28%
85	24%
84 and prior	21%

14. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new derived from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

b) The 1998 percent good applies to 1998 models purchased in 1997.

TABLE 14

Year of Model	Percent Good of Cost New
98	90%
97	67%
96	64%
95	61%
94	57%
93	54%
92	51%
91	48%
90	44%
89	41%
88	38%
87	35%
86	31%
85	28%
84	25%
83	22%
82 and prior	18%

15. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products.

a) Examples of property in this class include:

(1) crystal growing equipment;

(2) die assembly equipment;

(3) wire bonding equipment;

(4) encapsulation equipment;

(5) semiconductor test equipment;

(6) clean room equipment;

(7) chemical and gas systems related to semiconductor manufacturing;

(8) deionized water systems;

(9) electrical systems; and

(10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
97	74%
96	54%
95	38%
94	24%
93 and prior	10%

16. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

(1) billboards;

(2) sign towers;

(3) radio towers;

(4) ski lift and tram towers;

(5) non-farm grain elevators; and

(6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
97	94%
96	91%
95	88%
94	86%
93	82%
92	78%
91	73%
90	68%
89	64%
88	62%
87	58%
86	52%
85	46%
84	40%
83	34%
82	28%
81	22%
80	16%
79 and prior	9%

17. Class 17 - Boats.

a) Examples of property in this class include:

(1) boats;

(2) boat motors; and

(3) personal watercraft.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the F.O.B. or P.O.E. price from the ABOS Marine Blue Book.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Boats have a minimum value of $500 and a minimum tax of $7.50.

TABLE 17

Year of Model	Percent Good of Cost New
98	90%
97	68%
96	66%
95	64%
94	61%
93	59%

92	56%
91	54%
90	52%
89	49%
88	47%
87	45%
86	42%
85	40%
84	37%
83	35%
82	33%
81	30%
80	28%
79	26%
78 and prior	23%

18. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

(1) travel trailers;

(2) truck campers; and

(3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the original cost new or, for travel trailers, from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Trailers and truck campers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 18

Year of Model	Percent Good of Cost New
98	90%
97	71%
96	67%
95	64%
94	60%
93	57%
92	53%
91	50%
90	47%
89	43%
88	40%
87	36%
86	33%
85	29%
84	26%
83	22%
82 and prior	19%

19. Class 19 - Mobile Homes.

a) This class includes mobile homes assessed as personal property.

b) This schedule must be used in conjunction with the Personal Property Mobile Home Valuation Guide published by the Property Tax Division.

c) At the option of the county assessor, mobile homes may be valued applying the same methodology and schedules used in the valuation of mobile homes classified as real property.

TABLE 19

Year of Manufacture	Percent Good of Replacement Cost New
97	97%
96	94%
95	91%
94	88%
93	85%
92	82%
91	78%
90	75%
89	71%
88	68%
87	64%
86	60%
85	56%
84	52%
83	48%
82	45%
81	41%
80	37%
79	33%
78	29%
77	26%
76	24%
75	23%
74	21%
73 and prior	20%

20. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

(1) oil and gas exploration equipment;

(2) distillation equipment;

(3) wellhead assemblies;

(4) holding and storage facilities;

(5) drill rigs;

(6) reinjection equipment;

(7) metering devices;

(8) cracking equipment;

(9) well-site generators, transformers, and power lines;

(10) equipment sheds;

(11) pumps;

(12) radio telemetry units; and

(13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
97	92%
96	86%
95	82%
94	77%
93	70%
92	63%
91	55%
90	48%
89	41%
88	35%
87	27%
86	18%
85 and prior	9%

21. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:

(1) commercial trailers;

(2) utility trailers;

(3) cargo utility trailers;

(4) boat trailers;

(5) converter gears;

(6) horse and stock trailers; and

(7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Commercial and utility trailers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 21

Year of Model	Percent Good of Cost New
98	95%
97	75%
96	71%
95	67%
94	63%
93	59%
92	54%
91	50%
90	46%
89	42%
88	38%
87	33%
86	29%
85	25%
84	21%
83	16%
82 and prior	12%

22. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Taxable value is calculated by applying the percent good factor against the manufacturer's suggested retail price in the January NADA book. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) A 20% reduction in value is applied to vehicles with a "rebuilt/restored" designation on the title and registration.

e) A residual value of $500 and a minimum tax of $7.50 applies to cars and light trucks over 18 years old, after all adjustments.

TABLE 22

Percent of M.S.R.P.

Model Year	Domestic	Foreign	Trucks/Utility	Vans
98	88%	92%	98%	88%
97	76%	79%	85%	80%
96	66%	71%	79%	72%
95	57%	63%	75%	65%
94	50%	57%	66%	60%
93	42%	51%	60%	53%
92	35%	43%	52%	48%
91	29%	35%	46%	40%
90	21%	26%	38%	36%
89	17%	23%	35%	30%
88	14%	20%	27%	26%
87	12%	18%	24%	21%
86	9%	14%	23%	16%
85	7%	12%	18%	13%
84	6%	9%	17%	10%
83	5%	8%	15%	9%
82	4%	7%	13%	8%
81	3%	6%	12%	7%
80	2%	5%	10%	6%
79 and older	$500	Recommended	Residual	Value

23. Class 23 - Aircraft Not Listed in the Bluebook Price Digest Subject to the Uniform Tax.

a) Examples of property in this class include:

(1) kit-built aircraft;

(2) experimental aircraft;

(3) gliders;

(4) hot air balloons; and

(5) any other aircraft requiring FAA registration.

b) Aircraft subject to the uniform tax, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
97	75%
96	71%
95	67%
94	63%
93	59%
92	55%
91	51%
90	47%
89	43%
88	39%
87	35%
86 and prior	31%

24. Class 24 - Leasehold Improvements.

a) This class includes short life leasehold improvements to real property installed by a tenant, including:

(1) walls and partitions;

(2) plumbing and roughed-in fixtures;

(3) floor coverings other than carpet;

(4) store fronts;

(5) decoration;

(6) wiring;

(7) suspended or acoustical ceilings;

(8) heating and cooling systems; and

(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
97	94%
96	88%
95	82%
94	77%
93	71%
92	65%
91	59%
90	54%

89	48%
88	42%
87	36%
86 and prior	30%

F. The provision of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Affidavit of Exempt Use Pursuant to Utah Code Ann. Section 59-2-1101.

A. The owner of property receiving a full or partial exemption from property tax based on exclusive use for religious, charitable or educational purposes, is required to file the annual affidavit prescribed in Utah Code Ann. Section 59-2-1101.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties.

Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. Machinery and equipment used for processing of agricultural products or other nonproduction activities are not exempt.

R884-24P-46. Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.

A. The uniform fee established in Section 59-2-405 is levied against the following classes of personal property:

1. passenger cars and light trucks;
2. motor homes;
3. street motorcycles;
4. trailers;
5. commercial trucks;
6. commercial trailers;
7. truck campers;
8. off-highway recreational vehicles;
9. motorboats and sailboats;
10. any other tangible personal property that is required by law to be registered with the state before it is used on a public highway, public waterway, or public land, and that is not specifically excluded by Section 59-2-405.

B. The following classes of personal property are not subject to the uniform fee, but remain subject to the ad valorem property tax:

1. antique vehicles;
2. interstate motor carriers;
3. mobile and manufactured homes;

4. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

C. The fair market value of tangible personal property subject to the uniform fee is based on depreciated cost new as established for the following classes of property in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," which is published annually by the Tax Commission.

1. passenger cars and light trucks;
2. motor homes;
3. street motorcycles;
4. trailers;
5. commercial trucks;
6. commercial trailers;
7. truck campers;
8. off-highway recreational vehicles;
9. motorboats and sailboats;
10. all other tangible personal property required to be registered with the state.

D. Upon proper documentation, the value used for calculating the uniform fee for personal property subject to the uniform fee and belonging to centrally assessed taxpayers shall be subtracted from the unit value of the centrally assessed property in arriving at the final assessment of the centrally assessed property not subject to the uniform fee.

E. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33, which is published annually by the Tax Commission.

F. The county assessor may change the fair market value of any individual vehicle in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") was not included on the state printout, computer tape, or vehicle registration card;

2. The MSRP listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP adjustment made as a result of a vehicle owner's informal request will continue year to year on a percentage basis.

G. If the personal property is of a type subject to annual registration, the uniform fee is due at the time the registration is due, even if the personal property is not registered at that time.

1. No additional uniform fee may be levied upon vehicles transferred during the current year and for which the uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the uniform fee shall be due annually.

3. The vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the uniform fee.

4. A vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the uniform fee as long as the vehicle is kept in the other state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the uniform fee or ad valorem property tax but may be registered at the request of the owner.

H. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

I. The situs of personal property subject to the uniform fee is determined in accordance with Section 59-2-104.

1. For purposes of Section 59-2-405, personal property kept in a tax area other than that of the domicile of the owner for more than six months of the year shall be assessed in the other tax area.

a) If personal property is to be registered in a county other than that in which the owner is domiciled, the assessor in the county of registration shall so notify the assessor in the county of domicile. Notification shall be accomplished through the means of a form prescribed by the Tax Commission. In addition, the assessor in the county of registration must provide documentation of situs if so requested. Upon agreement by the assessor in the county of domicile, the form listing the personal property under consideration shall be forwarded to the Motor Vehicle Division.

b) If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days. A copy of the affidavit shall be forwarded to the Motor Vehicle Division.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor a list of all personal property subject to state registration and its corresponding taxable situs.

J. The veteran's and blind exemptions provided in Sections 59-2-1104, 59-2-1105, and 59-2-1106 are applicable to the uniform fee.

K. The provisions of this rule refer to the property tax year beginning January 1, 1992 and each succeeding year.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of

registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Private Rail Car Company Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the total rail car market value divided by the total number of rail cars in the rail car company's fleet.

2. "Total rail car market value" means the sum of the acquisition cost by year for rail cars purchased by the rail car company multiplied by the appropriate percent good factors contained in Class 10 of R884-24P-33, Personal Valuation Guides and Schedules, plus the sum of betterments by year depreciated on a 14-year straight line method.

3. "Total system car miles" means both loaded and empty miles accumulated during the prior calendar year by all the rail cars in the rail company's fleet.

4. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all the rail cars in the rail company's fleet.

5. "Utah percent of the system factor" means the Utah car miles divided by the total system car miles.

B. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the total rail car market value.

C. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner:

1. Calculate the number of rail cars allocated to Utah under the percent of system factor.

a) Multiply the Utah percent of system factor by the total number of in-service rail cars in the company's fleet.

b) Multiply the product obtained in C.1.a) by 50 percent.

2. Calculate the number of rail cars allocated to Utah under the time speed factor.

a) Divide Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in C.2.a) by the percent of in-service rail cars in the company's fleet.

c) Multiply the product obtained in C.2.b) by 50 percent.

3. Add the number of rail cars allocated to Utah under the percent of system factor, calculated in C.1.b), and the number of rail cars allocated to Utah under the time speed factor, calculated in C.2.c), and multiply that sum by the average market value per rail car.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1997.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Subsection 59-2-201(1)(c) and Section 59-2-801.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Mobile flight equipment" means the airframes, engines, and other personal property owned or operated by a commercial air carrier that are capable of flight or used as part of an aircraft capable of flight. Engines or spare parts that are not currently attached to an airframe or otherwise part of an aircraft are not part of the mobile flight equipment.

3. "Route" means the flight path, including landings and takeoffs, over the ground or water that a commercial air carrier's mobile flight equipment typically flies as determined by the Property Tax Division.

4. "Route miles" means the lineal ground distance in statute miles along a commercial air carrier's route as determined by the Property Tax Division.

5. "Designated taxing areas" means those taxing areas within a school district other than incorporated cities or towns. If, however, a school district's boundaries coincide with the boundaries of an incorporated city or town, the incorporated city or town shall be included in the designated taxing area.

B. The commission shall apportion the Utah portion of each commercial air carrier's mobile flight equipment valuation to the appropriate designated taxing areas. A designated taxing area's apportionment is determined by the proportion of route miles in that area compared to the total route miles within the state.

C. The valuation of a commercial air carrier's other personal and real property shall be allocated to the taxing area in which it is located on January 1 of each year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" is defined as the location where domicile has been established.

C. Except as provided in D., the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

R884-24P-53. 1998 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

B. All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	675
2)	Cache	600
3)	Carbon	525
4)	Davis	750
5)	Emery	450

6)	Iron	625
7)	Kane	350
8)	Millard	700
9)	Salt Lake	700
10)	Utah	625
11)	Washington	650
12)	Weber	725

(Note: Some counties do not have Irrigated I property.)

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	575
2)	Cache	500
3)	Carbon	400
4)	Davis	650
5)	Duchesne	375
6)	Emery	350
7)	Grand	400
8)	Iron	525
9)	Juab	375
10)	Kane	200
11)	Millard	600
12)	Salt Lake	550
13)	Sanpete	475
14)	Sevier	525
15)	Summit	375
16)	Tooele	450
17)	Utah	475
18)	Wasatch	400
19)	Washington	550
20)	Weber	625

(Note: Some counties do not have Irrigated II property.)

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	375
2)	Box Elder	425
3)	Cache	350
4)	Carbon	250
5)	Davis	450
6)	Duchesne	275
7)	Emery	200
8)	Garfield	150
9)	Grand	250
10)	Iron	375
11)	Juab	225
12)	Kane	150
13)	Millard	400
14)	Morgan	325
15)	Piute	350
16)	Rich	225
17)	Salt Lake	350
18)	San Juan	200
19)	Sanpete	325
20)	Sevier	375
21)	Summit	250
22)	Tooele	275
23)	Uintah	300
24)	Utah	375
25)	Wasatch	250
26)	Washington	350
27)	Wayne	200
28)	Weber	425

(Note: Daggett County does not have Irrigated III property.)

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	275
2)	Box Elder	325
3)	Cache	250
4)	Carbon	125
5)	Daggett	200
6)	Davis	300
7)	Duchesne	175
8)	Emery	100
9)	Garfield	75
10)	Grand	150
11)	Iron	225
12)	Juab	150
13)	Kane	75
14)	Millard	300
15)	Morgan	225
16)	Piute	250
17)	Rich	150
18)	Salt Lake	200
19)	San Juan	50
20)	Sanpete	225
21)	Sevier	275
22)	Summit	150
23)	Tooele	125
24)	Uintah	150
25)	Utah	225
26)	Wasatch	175
27)	Washington	250
28)	Wayne	100
29)	Weber	325

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

a)	Box Elder	560
b)	Cache	650
c)	Davis	630
d)	Utah	510
e)	Washington	755
f)	Weber	605
g)	All other counties	580

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	160
2)	Box Elder	165
3)	Cache	210
4)	Carbon	115
5)	Daggett	140
6)	Davis	210
7)	Duchesne	140
8)	Emery	115
9)	Garfield	110
10)	Grand	110
11)	Iron	160
12)	Juab	115
13)	Kane	110
14)	Millard	115
15)	Morgan	140
16)	Piute	135
17)	Rich	115
18)	Salt Lake	165
19)	Sanpete	165
20)	Sevier	165
21)	Summit	165
22)	Tooele	165
23)	Uintah	140
24)	Utah	165

25)	Wasatch	165
26)	Washington	160
27)	Wayne	135
28)	Weber	210

(San Juan county does not have any Meadow IV property.)

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	90
2)	Box Elder	125
3)	Cache	250
4)	Carbon	90
5)	Daggett	90
6)	Davis	180
7)	Duchesne	125
8)	Emery	100
9)	Garfield	90
10)	Grand	90
11)	Iron	130
12)	Juab	135
13)	Kane	90
14)	Millard	160
15)	Morgan	250
16)	Piute	90
17)	Rich	165
18)	Salt Lake	110
19)	San Juan	60
20)	Sanpete	120
21)	Sevier	100
22)	Summit	100
23)	Tooele	125
24)	Uintah	140
25)	Utah	100
26)	Wasatch	100
27)	Washington	80
28)	Wayne	100
29)	Weber	225

a) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	55
2)	Box Elder	90
3)	Cache	215
4)	Carbon	55
5)	Daggett	55
6)	Davis	145
7)	Duchesne	90
8)	Emery	65
9)	Garfield	55
10)	Grand	55
11)	Iron	95
12)	Juab	100
13)	Kane	55
14)	Millard	125
15)	Morgan	215
16)	Piute	55
17)	Rich	130
18)	Salt Lake	75
19)	San Juan	25
20)	Sanpete	85
21)	Sevier	65
22)	Summit	65
23)	Tooele	90
24)	Uintah	105
25)	Utah	65
26)	Wasatch	65
27)	Washington	45
28)	Wayne	65
29)	Weber	190

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

TABLE 9
Grazing Land

a)	Graze I	
	1) All Counties	40
b)	Graze II	
	2) All Counties	12
c)	Graze III	
	3) All Counties	8
d)	Graze IV	
	4) All Counties	4

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 10
Nonproductive Land

a)	Nonproductive Land	
	1) All Counties	4

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301, and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's

statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Customer Service Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(3)

"Principal route:" means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Section 59-2-1328.

A. A judgment levy imposed on or after January 1, 1997, is exempt from the requirements of Sections 59-2-918 and 59-2-919, regardless of when the judgment underlying that levy was entered.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-401.5, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current calendar year.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless it is demonstrated to the satisfaction of the assessor that the motor vehicle or state-assessed commercial vehicle will usually be kept in a tax area other than the tax area of the purchaser's domicile.

1. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

2. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.1. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is

applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" is as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Except as provided below, situs of purchased personal property shall be the tax area of the purchaser's domicile.

1. For purposes of Section 59-2-405, personal property kept in a tax area other than that of the domicile of the owner for more than six months of the year shall be assessed in the other tax area.

a) If personal property is to be registered in a county other than that in which the owner is domiciled, the assessor in the county of registration shall so notify the assessor in the county of domicile. Notification shall be accomplished through the means of a form prescribed by the Tax Commission. In addition, the assessor in the county of registration must provide documentation of situs if so requested.

b) If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999 and each succeeding year.

KEY: taxation, personal property, property tax, appraisal
August 11, 1998 **Art. XIII, Sec 2**
Notice of Continuation May 8, 1997 **9-2-201**
11-13-25
41-1a-202
41-1a-301
59-1-1
59-1-210
59-2-13
59-2-102
59-2-103
59-2-104
59-2-201
59-2-210
59-2-211
59-2-219
59-2-301
59-2-302
59-2-303
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-501 through 59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1005
59-2-1101
59-2-1107 through 59-2-1109
59-2-1113
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1328
59-2-1317
59-2-1347
59-2-1351
59-3-1
59-5-1
59-5-501 through 59-5-515
63-18A-1 through 63-18A-6

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399, as contained in the October 1, 1997 edition as printed by the Regulations Management Corporation Service, is incorporated by reference, except for Parts 395.1(l), 395.1(m), 395.1(n) and 395.1(o). In addition, amendments to the same edition, which appear in the November 1, 1997, December 1, 1997, January 1, 1998, February 1, 1998, March 1, 1998, April 1, 1998, and May 1, 1998, are incorporated by reference within this rule. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5 engaged in Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

C. Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, UCA 53-3-305.5 for intrastate drivers under R708-34,

D. Drivers involved wholly in intrastate commerce shall be at least 18 years old; unless transporting placarded amounts of hazardous materials; or 16 or more passengers including the driver.

E. Drivers in involved in interstate commerce shall be at least 21 years old.

KEY: trucks, transportation safety

September 1, 1998	**27-17-103**
Notice of Continuation March 31, 1997	**27-17-104**
	54-6-9
	63-49-4

R909. Transportation, Motor Carrier.

R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.

R909-75-1. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, through February 1, 1998, of the October 1, 1997, edition as printed in the Regulations Management Corporation Service, are incorporated by reference. In addition, amendments to the same edition, which appear March 1, 1998, April 1, 1998, May 1, 1998 and June 1, 1998, are incorporated by reference within this rule. This applies to all private, common, and contract carriers by highway in commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulation

September 1, 1998 27-17-103

Notice of Continuation April 22, 1997 27-17-104